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IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1987

No _____
RAYMOND CLOUTIER, Petitioner

v.

UNITED STATES OF AMERICA

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# PETITION FOR A WRITE OF CERTIORARI TO THE SECOND CIRCUIT COURT OF APPEALS

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RAYMOND CLOUTIER
94-25 Hollis Court Blvd.
Queens Village, NY 11428
(718) 464-9416

## STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

Petitioner/Defendant was charged by a three count information of violating Title 26 USC Section 7203. Trial was held and Defendant was found guilty by jury of all three Counts. Defendant was subsequently sentenced, incarcerated, released and is currently on probation.

The basic question presented here for review is whether or not an individual can be charged, tried, convicted and incarcerated in a proceeding that as a whole made a mockery of the due process clause of the Fifth Amendment, was shocking to the conscience, and if not redressed by this Court was and is a danger to the very foundations of indiviual liberty.

More specifically this petition raises the following questions; Can the trial court assume jurisdiction once it's challenged? Can a criminal Defendant be denied his Counsel of Choice?

Can Defendant be forced to trial without benefit of meaningful counsel? If Defendant is forced to trial without meaningful representation can he then be denied access to his wife, family, friends and counsel of choice? Can a criminal Defendant who has been forced to proceed without representation also be incarcerated under conditions that deny him the opportunity to prepare his defense? Can a criminal Defendant be charged by information for allegedly committing an infmous crime? Can the trial court direct a verdict of guilty to the crime charged? To any element of the crime? Is consent obtained by fraud valid? and Can federal officers harass, intimidate, and otherwise deny a criminal Defendant fundamental constitutional rights? The answer to these questions is obviously, No! This Petition is intended to illustrate that, no, is the only possible answer.

IN THE SUPREME COURT

OF THE UNITED STATES

OCTOBER TERM 1987

NO._____

RAYMOND D. CLOUTIER, Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI
TO THE SECOND CIRCUIT
COURT OF APPEALS

A writ of certiorari is respectfully sought to review the Court of Appeals Order Affirming the conviction of the Petitioner in a criminal case entered on March 5, 1987 by the Second circuit Court of Appeals.

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## OPINION BELOW

The Opinion of the Second Circuit is reported at, slip op. No. 86-1397 (March 5, 1987) and is printed in the Appendix attached hereto infra, page A92.

## JURISDICTION

The judgment of the Second Circuit Court of Appeals (App. C ) was entered on March 5, 1987. No Petition for Rehearing was filed. The jurisdiction of the supreme Court is invoked under Title 28 U.S.C. § 1254(1).

## STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

THE UNITED STATES CONSTITUTION

BILL OF RIGHTS

A. ARTICLE I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

B. THE UNITED STATES CONSTITUTION

BILL OF RIGHTS

ARTICLE V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be

subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

C. THE UNITED STATES CONSTITUTION

BILL OF RIGHTS

ARTICLE VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of

Counsel for his defense.

D. THE UNITED STATES CONSTITUTION

BILL OF RIGHTS

ARTICLE IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

E. THE UNITED STATES CONSTITUTION

BILL OF RIGHTS

ARTICLE X

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

## STATEMENT OF THE CASE

Petitioner/Defendant (hereinafter Defendant) made his first appearance before the Court without counsel on May 1, 1986. (Reporter's Transcript May 1, 1986 page 4 (hereinafter R.T. 1/5/86 p.4)). At this time Defendant challenged the jurisdiction of the Court and without requiring the government to prove jurisdiction as is required once challenged the court entered a plea of not guilty on behalf of the Defendant. (R.T. 5/1/86 p. 6).

Defendant again appeared before the Court specially not generally on May 8, 1986 to challenge jurisdiction and once again the Court declined to require the government to prove jurisdiction on the record. Defendant also indicated to the court at this time that it was his desire to seek counsel. (R.T. 5/8/86). The cause was continued until June 11, 1986 at which time

Defendant appeared with counsel of his choice who was not a licensed attorney but who was a student of the law. The Court again refusing to require the government to prove jurisdiction on the record also refused Defendant his counsel of choice and set a trial date of July 21, 1986 (R.T. 6/11/86 pp. 3-10)

Defendant filed an Interlocutory Appeal in regard to his jurisdictional challenge which had not been decided by the July 21, 1986 trial date. (Docket number 7/7/86 and 7/21/86, hereinafter D.No. 7/7/86 and 7/21/86). Defendant failed to appear for trial on July 21, 1986 because he was under the belief that his Interlocutory Appeal had to be decided before trial could commence. Defendant explained this to the Court at his next appearance pursuant to a warrant on July 23, 1986 (R.T. pp. 2-17). Nevertheless the Court set a $10,000.00 cash bond, a jury was impaneled and trial commenced although Defendant was

without counsel. (R.T. pp. 2-21). The Court did, however, appoint counsel to assist Defendant although said counsel was directed not to participate in the trial and in fact did not participate in the trial or Defendant's defense in any meaningful way. (R.T. pp. 27-28, p. 75 and the record as a whole). Defendant objected to proceeding without counsel and also objected to the lack of assistance he received from his appointed counsel. (R.T. 7, 19, 20, 23, 63, 66, 67, 75, 114, 136 and record as a whole).

In addition to not having the benefit of counsel nor having waived this right Defendant could not make his $10,000.00 cash bond and so was incarcerated between the first and second days of his short trial without the benefit of counsel, the ability to confer with family and friends (even during trial) and without the benefit of even pencil, pen and/or paper. (R.T. p. 23, 28, 63, 64, 66, 67, 71 and 75).

In addition to denying the Defendant the benefit of counsel, let alone counsel of choice and incarcerating Defendant during trial, the Court also denied the Defendant his right to a fair trial by not impaneling a jury of Defendant's peers, showing the under lying contract making Defendant a taxpayer, establishing that the 16th amendment was properly ratified, and charging Defendant with an infamous crime through an information not an indictment and without probable cause.

It's important for the Supreme Court to accept it's role as one of the checks and balances in our governmental scheme and decide this case as thousands of citizens are being harassed, tried, convicted, and incarcerated as this Defendant was upon losing this cause. Such harassment, intimidation and wrongful acts will not cease until such time as this Court accepts its mandate and brings this country's Federal District and Circuit

Courts of Appeal back into and within the parameters of the Constitutional government envisioned and established by our forefathers.

## STATEMENT

### I. COUNSEL OF CHOICE

Defendant appeared before the court on May 1, 1986 and again on May 8, 1986. In addition to challenging the Court's jurisdiction on these two occasions the Defendant informed the court of his desire to obtain counsel of choice. On May 8, 1986 the Court scheduled another appearance before the Court giving the Defendant until June 11, 1986 to reappear with the benefit of counsel. (R.T. 5/1/86, R.T. 5/8/86). Defendant appeared on June 11, 1986 with Andrew Melinchensky, an unlicensed attorney, but a student of the law and constitutional attorney of Defendant's choice. Despite the fact that Defendant informed the Court that he was aware his chosen counsel did not have a license to practice law in the State of New York, or any other state, that nevertheless, he, the Defendant, was confident in his chosen counsel's ability to represent him, the trial court

judge wrongfully denied the Defendant his legal and constitutional right to "benefit of counsel of choice." (R.T. 6/11/86 pp. 4-8 p. 10); Chandler v. Freegag, 348 U.S. 3.

The trial court judge set a trial court date of July 21, 1986 and informed Defendant with or without counsel, Defendant would go to trial on that date. Subsequently Defendant was forced to trial without 'benefit of counsel of choice' or any other meaningful representation for that matter despite Defendant's protestation that he was not competent to proceed without representation. (R.T. 5/11/86 pp. 4-8, p 10; R.T. pp. 7, 19, 20, 23, 63, 66-67, 75, 114, 136). Nor, is this Defendant's experience an isolated instance. All over the country free men are being harassed and intimidated, by members of the various state licensed legal fraternities, the American Bar Association, and the fraternal alumni of those organizations who protect them (judges) who

force free men into involuntarily waiving their rights under the Constitution and the laws of this land to 'benefit of counsel of choice' and involuntarily proceeding without counsel or accepting not necessarily best counsel, but licensed and protected counsel. In cases such as the one at bar, where the 'system's status quo' is being challenged, this can be akin to being forced to accept adversay's counsel. Lack of choice of counsel can be conceivably even worse than no counsel at all, or having to accept counsel beholden to one's adversary. Burgett v. Texas, 389 US 109.

The Sixth Amendment of the U.S. Constitution states in pertinent part:

> "In all criminal prosecutions, the accused shall enjoy the right...to have the assistance of counsel for his defense."

The meaning of the above words is plain and was articulated by the Supreme Court in Faretta v. California, 422 U.S. 806 (1975):

> The sixth and Fourteenth Amendments of our Constitution guarantee that a person brought to trial in any state or federal court must be afforded the right to the assistance of counsel before he can be validly convicted and punished by imprisonment. This clear constitutional I rule has emerged from a series of cases decided here over the last 50 years.

Also, See Powell v. Alabama, 287 U.s. 45, p 70; Poindexter v. State, 191 S.W.2d. 445; Burgess v. Texas, supra; Gideon v. Wainright, 372 U.S. 335; and Argersinger v. Hamlin, 407 U.S. 25, p. 37.

As stated, the Sixth Amendment guarantees a criminal defendant the right to be represented by counsel and has been interpreted to include representation at all stages of a criminal proceeding. Miranda v. Arizona, 384 U.S. 436. In determining just who the word counsel refers to as used in the Sixth Amendment one must necessarily make reference to the common law usage of words at the time the bill of Rights and the Constitution were written. See, Knight v. U.S., 302 U.S. 583 (1938); Pollock v. Farmer's Loan and

Trust Co., 157 U.S. 429 and Marshall v. Gordon, 243 U.S. 521 (1971).

If we consider the fact that many of our forefathers who framed the Constitution were attorneys, and keep in mind the common usage of the terms of that day as used in the Sixth Amendment, it becomes apparent that the use of the term counselor instead of attorney or attorney-at-law was purposefully made by our forefathers as there is and was an intended distinction between the terms counselor and attorney.

> "The language of the Constitution cannot be interpreted safely, except by reference to common law and to British institutions as they were when the instrument was framed and adopted. The statesmen and lawyers of the convention who submitted it to the ratification of conventions of the thirteen states, were born and brought up in the atmosphere of the common law and thought and spoke in its vocabulary...when they came to put their conclusions into the form of fundamental law in a compact draft, the expressed them in terms of common law, confident that they

> could be shortly and easily understood." Ex Parte Grossman, 267 U.S. 87, 108 (1925).

If we want to start with the common meaning of common words in use when the Constitution was written we can go to Noah Webster's First Edition of an American dictionary of the English Language, 1828, republished in facsimile edition by Foundation for American Christian Education, San Francisco, California, Second Edition, 1980 and find the following:

> "In ALL criminal prosecutions, the accused SHALL ENJOY the RIGHT... to have the ASSISTANCE of COUNSEL for his defense."

Sixth Amendment to the United States Constitution, (in pertinent part; emphasis added).

> ALL: "a. Every one, ...the whole quantity, extent, duration, amount, quality, or degree;...This word signifies the whole or entire thing..."

It is obvious on its face that the word "all" allows for no exceptions and is all-inclusive, and it is also obvious that the Sixth Amendment

therefore allows for no criminal trial where it does not apply.

> SHALL: "v.i. In the present tense, shall...forms the future tense; ...informs another that a fact is to take place...In the second and third persons, shall implies a promise, command or determination. 'You shall receive...'"

The word "shall", in legal contemplation, is mandatory.

> ENJOY: "v.t....To feel or perceive with pleasure; to take pleasure or satisfaction in the possession or experience of ...We enjoy a free constitution and inestimable privileges."

> RIGHT: "n. Conformity to the will of God, or to His law, the perfect standard of truth and justice...Just claim; immunity; privilege. all men have the right to the secure enjoyment of life, personal safety, liberty, and property. We deem the right of trial by jury invaluable, particularly in the case of crimes."

> ASSISTANCE: "n. Help; aid; furtherance; succor; a contribution of support in bodily strength or other means."

The common understanding of the word "assistance" is that it comes from one in a

secondary capacity, or one who contributes support or aid to another.

> COUNSEL: "n. Advice; opinion or instruction,...Those who give counsel in law; any counselor or advocate, or any number of counselors, barristers, or sergeants; as the plaintiff's counsel, or the defendant's counsel."
>
> "n. Any person who gives advice; ... One who is consulted by a client in a law case; one who gives advice in relation to a question of law; one whose profession is to give advice in law and manage causes for clients."

If we take the above defined words at their common meaning it becomes clear that every criminal Defendant must (shall) have satisfaction in experiencing (enjoy) his just claim (right) to the support or help (assistance) from any person or counselor (counsel) he chooses. Without the freedom to determine for himself who Defendant wants to turn to in his time of need for succor and advice it can hardly be said that Defendant enjoys the right to assistance of counsel as the mandatory "shall' in the sixth amendment of the

United states Constitution guarantees. Nor, must the Defendant rely solely on the plain meaning of the words in the sixth Amendment to the United States Constitution to claim his right to counsel of choice, although, the plain meaning of the words should be enough.

As previously stated the constitution cannot be safely interpreted without reference to the common law and it's vocabulary.

To have a "friend" act as Counsel was a Common Law Right and was recognized as such in the Bill of Rights when the word "counsel" was used instead of "attorney".

> "In early times, personal communication between counsel and client "was necessity"; for there were no attorneys..." It was not until after the statutes of Merton (20 H. III, c. 10), Westminster (3 E. I, c. 33), and Gloucester (6 E. I, c. 1), that suitors were allowed to appear at pleasure by attorney. The counselor was for many centuries the only person known as a 'lawyer'".

Kennedy v. Broun, 13 C.B.N.S. 677, 698. Also, Swinfen v. Swinfel, 1 C.B.N.S. 364, 403; and Pitt v.

Yalden, 4 Burr 2060, 2061.

It couldn't be more plain that there is a distinction between the term counselor and attorney at common law. Certainly a licensed attorney may be a counselor, but all counselors may not be licensed attorneys. This view was upheld in the United States District Court, at least in regard to a taxpayer's right to counsel when being interrogated by the Internal Revenue Service.

> "Yet while he was informing the prospective defendant of his right to counsel, he was simultaneously requesting that the defendant's counsel leave the interrogation. In effect, the investigator informed Tarlowski that he might have his attorney present, but not his accountant.

Ruling in favor of Tarlowski's motion to suppress, the Court said:

> "For a government official to mouth in a ritualistic way part of the warning about the right to counsel, while excluding the person relied upon as counsel is, in effect, to reverse the meaning of the words used."

U.S. v. Tarlowski, (69 - 2 U.S.T.C. & D.C. EA. Dist. NY) 305 F.Supp. 112 (1969).

While the above cite is not in regard to a criminal Defendant before a District court Judge, it is important in that it does recognize that a citizen's Sixth Amendment right to counsel is not limited to licensed attorneys. Cases to the contrary notwithstanding, if counsel for Sixth Amendment purposes can be someone other than a licensed attorney, sometimes any further limitation is artificial and null and void, as it is a limitation of a guaranteed right and not part of the Sixth Amendment.

Defendant has a right under the First Amendment to freely associate with whom he pleases in his defense and its preparation and presentation, so long as such is respectful, with decorum and lack of contempt for orderly rules of procedure which do not deprive one of constitutional rights.

To deny this right is also to deny his Fifth Amendment right to due process, which is actually a guarantee of fundamental fairness.

Defendant's First Amendment right to petition the government for redress of grievances has also been violated in that if Congress passes a statute requiring a Federal Court to abide a statute of the State in which it sits, and said statute of the State purports to make it a crime for a Defendant to be represented by a non-attorney, then Congress has effectively done not only what the constitution does not authorize, but it has done what is expressly forbidden.

If such is the case, Congress has made a "law" frustrating the right of the people, and the Defendant therein, "to petition for redress of grievances." Defendant should have been allowed his Petition for Redress of Grievances to the jury through counsel of his choice.

By denying the defendant his counsel of

choice the trial court also denied the Defendant equal protection of the laws as guaranteed through the due process clause of the Fifth Amendment.

> "The due process s clause of the fifth Amendment guarantees to each citizen the equal protection of the laws and prohibits a denial thereof by any Federal official."

Bolling v. Sharpe, 327 U.S. 497.

Defendant, because the court did not allow him to have counsel other than a licensed attorney, was placed in a position where he had less rights than a prison inmate who does have court approved access to non-licensed attorneys known as "jailhouse lawyers."

Defendant chose to exercise his first Amendment right to freedom of speech by choosing as his counsel an individual without an attorney's license. This was not only a permissible act on the part of the Defendant,

but a guaranteed one.

Defendant has not only the right to speak for himself, but also to speak through whom he pleases. This is inherent in the First Amendment right to freedom of speech. It is also self-evident, as a part of the Natural Rights Doctrine, and among those rights called inherent and inalienable outlined in the Declaration of Independence, which antecedes all government, and which are natural or God-given, rather than government-given rights. Defendant points out that he does not claim any "attorney-given" rights, but suggests his God-given natural rights not be infringed upon. It is of significance that the words in the first Amendment embrace freedom <u>of</u> speech, and not just freedom <u>to</u> speak.

The Ninth and Tenth Amendments also prohibit the denial of counsel of choice. Nowhere has Defendant or his predecessors delegated such

restrictive power to the United states or to the States, and if the Court will closely examine the Ninth and Tenth amendments, it will find that the right to counsel of choice, such as Defendant herein claims, is also secured in the penumbra of these Amendments, particularly the Ninth, which is protected in the States (against 'practice of law' statutes) by the fourteenth Amendment. Roe v. Wade, 41 L.W. 4213 (1973); Shapiro v. U.S. 641, 394 U.S. 618 (1966); Griswold v. Connecticut, 381 U.S. 479 (1964).

Defendant realizes that there is case law indicating that it is permissible for a trial court judge to deny a criminal Defendant his counsel of choice if that counsel is not a licensed attorney. However, for the foregoing reasons and the reason that follow, Defendant maintains any such case precedent is unconstitutional and so, null and void.

The United States Constitution is the will of the

people, clearly set down for their agents elected and appointed, to follow. No law supersedes the U.S. Constitution and only those in "pursuance" of it may stand. Even treaties must be "in pursuance" of the Constitution

> " We the people...do ordain and establish this Constitution for the United States of America".

Article VI, Sec. 2, U.S. Constitution.

And they also commanded that:

> "...All...judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution;."

Article VI, Section 3, U.S. Constitution.

It is clearly the will of the bar associations, not of the People, to close the Courts to all but licensed attorneys. Use of the word "counsel" rather than "attorneys" denotes the will of the Sovereign Power, which cannot be lawfully overridden.

> "In the United States, Sovereignty resides in the people, who act through the organs established by

the Constitution."

Chisholm v. Georgia, 2 Dal 419, 471; Penhallow v. Doane's Administrators, 3 Dal 54, 93; McCullock v. Maryland, 4 Wheat 316, 404, 405; Yick Wo Hopkins, 118 U.S. 356, 370.

> "...The Congress cannot invoke the sovereign power of the people to override their will as thus declared.

Perry v. United States, 294 U.S. 330, 353 (1935).

The People declared their will as to the rights of the accused in all criminal prosecutions in the sixth Amendment, and the right of the Defendant to "enjoy" the "assistance of counsel" was purposely couched in the common law term, "counsel" so as to include those friends upon whom Defendants may depend for advice and protection.

Defendant has the right to be foolish as well as wise, and his liberty is his to do with as he pleases. To deny him his freedom of choice in this matter of counsel is to unduly interfere with the defense,

and constitutes a denial of the will of the people. From whom the courts' authority are derived, and a substitution in lieu thereof is being used--that of the "will of attorneys" and/or the court.

> "Bills of rights are, in their origin, reservations of rights not surrendered to the prince."

Hamilton, Federalist Papers, No. 84.

The right to have a "friend" plead one's case or to assist one in court, is a common law right secured in the Sixth Amendment.

> "History is clear that the first ten amendments to the Constitution were adopted to secure certain common law rights of the people, against invasion by Federal Government.

Bell v. Hood, 71 F.Supp., 813, 816 (1947) U.S.D.C., So. Dist. CA.

Our forefathers spoke and wrote in the vernacular of the common law, and "counsel" has the word they chose. The facts are conclusive and this point, and the record supports this conclusion. Interpretation of the

word "counsel{" to mean "attorney only" is a departure from the safeguards of the bill of Rights.

A more recent confirmation of Constitutional rights of the accused says:

> "Where rights secured by the Constitution are involved, there can be no rule-making or legislation which would abrogate them." Miranda v. Arizona, supra.

And the Court concluded that:

> "This doctrine would subvert the very foundation of all written constitutions."

Marbury v. Madison, 5 U.S. 137, 176.

In conclusion, Defendant believed it vital to his defense to seek counsel he had confidence in. Defendant, also, believed he was being charged with violating laws that were created by attorney/legislators to pervert the Constitution of the United States and turn the exercise of natural and constitutionally protected rights into crimes. Defendant could not find an attorney he felt confident in yet alone enjoyed under the circumstances of his case. And, can Defendant

really be blamed for his lack of confidence in licensed attorneys when Chief Justice Warren Burger states publicly that 50% of trial attorneys are incompetent, the newspapers are full of the Nixons, Haldamans, Erlichmans, Mitchells, Deans, Abscams, and the law profession itself is near the bottom of the list in public opinion polls when trustworthiness is the issue involved?

Defendant was prejudiced by the trial court denying him counsel of choice and all counts of the information should be dismissed.

2. WITHOUT BENEFIT OF COUNSEL

After the trial court judge denied the Defendant his natural right to choose counsel of choice the Court compounded its error by forcing the Defendant to trial over Defendant's request for a continuance to obtain counsel objection to non-assistance from a last minute

Court appointed counsel, admitted incompetence to represent himself; and protest. (R.T. pp. 7, 20-23, 27-29, 63, 66-67, 75, 114, 136, 173.) It's clear that the Defendant never voluntarily waived his right to counsel and was only guilty of bringing counsel of choice to his June 11, 1986 Court appearance and being unable to find affordable counsel by his trial date. (R.T. 6/11/86, R.T. 7, 10, 20-23). To find a voluntary waiver of the right to counsel the Court must first conduct a searching inquiry into the voluntariness of the waiver. Johnson v. Zerbst, 304 US. 458. No such search was conducted here, and as already mentioned, any search of the record will show no such search was made.

Instead of a waiver the record, as already mentioned, shows Defendant was denied counsel of choice, forced to trial without representation or at best afforded only a last minute court appointed assistant offering no or

poor assistance, convicted and wrongfully and illegally and incarcerated. (Appendix pp 124; hereinafter App. pp. 124). If the accused is not represented by counsel and has not competently and intelligently waived his constitutional right the Sixth amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or liberty. Johnson v. Zerbst, supra, at 468. No person may be denied his liberty who has, as Defendant here, been denied the assistance of counsel as guaranteed by the Sixth Amendment and this applies to all criminal prosecutions. Argersinger v. Hamlin, 407 U.s. 25; Also, Miranda v. Arizona, supra, had Gideon v. Wainright, supra.

Although Defendant has spent his required time in prison and is currently on probation a ruling by this, The Supreme Court, is important so that no one else is wrongfully deprived of fundamental constitutional rights, convicted and imprisoned by

our current Court system. It's time a message is sent by this Court to those lower counts entrusted with the preservation of justice as guardians of the people's rights. It's the duty of this Court and all our courts to protect our rights. those who framed our Constitution and the Bill of Rights were ever aware of the subtle encroachment on individual liberty. They knew that illegitimate and unconstitutional practices get their first footing by silent approaches and slight deviations from legal modes of procedure. Boyd v. United States, 116 Us 616 (1866).

Defendant has accepted his duty as a freeman to pursue this matter, although he has served his time. consequently, Defendant urges this Court to accept its constitutional duty as protector of the last resort by issuing a ruling upholding the Constitution, Bill of Rights and individual liberty. The Constitution is the Supreme Law of the land. Marbury v. Madison, supra; Also,

Miranda v. Arizona, supra, and Marchetti v. U.S., 390 U.S. 39.

3. NO INDICTMENT

An information is not an indictment. An information is a written accusation of a crime made by the U.S. Attorney supported only by the U.S. Attorney's affidavit. An information permits the government to prosecute an individual without benefit of a grand jury indictment. The use of informations has a long history of abuse being used as a means of political suppression and intimidation. People v. Sponsler, 46 N.W. 450; also, 4 Bl. Comm. 310. It was by information the Defendant herein was charged in violation of his Fifth Amendment rights.

A grand jury indictment, on the other hand, guarantees probable cause and so was and is

required as a constitutional guarantee in any case charging an 'infamous' crime. An "infamous" crime has been defined as any crime for which punishment is imprisonment, Makin v. United States, 117 US 348. defendant was charged without indictment, but by information and has subsequently been imprisoned over Defendant's objection. A ruling upholding Defendant's due process is necessary in order that this government doesn't travel backwards through history to the time of Henry VII and a century of oppression. 4 Bl. Comm. 310.

4. JURISDICTION, NO PROOF ON THE RECORD

The Defendant appeared before the Court May 1, 1986 for the first time. It was at this time the Defendant challenged the jurisdiction of the Court to hear the case and the U.S. Attorney's office to bring the charges. (R.T. 5/1/86). Defendant again appeared before the court on

May 8, 1986 and once again challenged the jurisdiction of the Court by appearing 'specially not 'generally'. (R.T. 5/8/86). In fact, the record, as a whole shows Defendant never gave up or waived his jurisdictional challenge. (Record as a whole).

It's common knowledge that once jurisdiction is challenged it must be proven by the prosecutor and not the Court. Such proof must be made by the prosecutor and on the record. McNutt v. GMAC, 298 U.S. 178; Agen v. Levine, 415 U.S. 533; and Lesee v. Levy, 4 U.S. 3008. A review shows that the record is devoid of any such prosecutorial proof thus violating Defendants Fifth, Sixth, Ninth and Tenth Amendment constitutional rights. While it's not necessary to discuss whether or not the court does have jurisdiction until some proof it exists is put on the record by the prosecutor Defendant does not believe such jurisdiction exists. Nevertheless, Defendant

believes it is appropriate to at least point out to the Court without being premature that he has been charged and convicted of a tax crime and although challenged there is no proof of Defendant's status as a taxpayer. Our tax system is voluntary and any consent implied or otherwise, deemed on the part of the Defendant to accept status as a taxpayer has been obtained by fraud and as such is violated.

The Privacy Act of 1974 proves that the federal government collects income taxes through fraud. The Privacy Act states that all private individuals have the right not to disclose. This fact is readily apparent in Section 2(a)(4), where it is stated:

> "The Congress finds that the right to privacy is a personal and fundamental right protected by the Constitution of the United States."

This statement clearly means that the private individual has an absolute right to privacy in tax matters. Senator Sam Ervin, the father of the Privacy Act, stated the fact on May 1, 1974, when

he introduced the "Federal Privacy Board".

Moreover, on May 1, 1974, Senator Ervin introduced a voluntary bill. All bills introduced by both the House and the Senate on the subject of privacy stated that when federal agencies are soliciting information from individuals, they shall notify the individual: "which federal statute or regulation of any, requires disclosure of information." No federal statute, or regulation (including Executive order) has been presented to Defendant that requires him, a private individual, to disclose (file) private financial information and to pay a federal income tax.

In its stead, a fraudulent Privacy Act and Paperwork Reduction Act Notice has been presented by the I.R.S. to mislead Defendant into believing that he is required to disclose (file). The Privacy Act clearly states that when a federal agency is soliciting information, that the private individual shall be notified:

> "Authority whether granted by statute or Executive order of the President, which authorizes ... whether disclosure of such information is mandatory or voluntary." P.A. Section (e)(3)(A)

This requirement is reinforced and confirmed by Treasury Department Privacy Regulation, 31 CFR 1.35 (b)(2) which states...

> "To insure that the form of a separate form that can be retained by the individual makes clear to the individual which information he is required by law to disclose and the authority for that requirement and which information is voluntary." 35 DFR 1.35 (b)(2)

This means that the government is required to notify the private individual of a statute or Executive order that requires him to disclose (file) information and whether that statute or Executive order is mandatory or voluntary. This point is clear to the layman.

The government is using a sophisticated fraud to deny Defendant his privacy rights in tax matters. Section 6012 of the I.R.C. is the 'individual's' requirement of (must) submit a federal income tax return. If Section 6012 is the

private individual's requirement to disclose, it is also required by law to be stated in the private individual's Privacy Act Notice or rule. Section 6012 is not stated in the I.R.S. "Notice". This is an admission that the I.R.S.. does not apply to the private individual defined in the Privacy Act. the only individual the I.R.S.. can apply to then, is the artificial person or taxpayer. This absolutely concurs with the fact that the private individual has his constitutional Rights not to disclose. The I.R.S. has addressed all the solicitation requirements of the Privacy Act and Paperwork Reduction Act Notice to the artificial person or taxpayer. This is an overt and malicious fraud. The only sentence that doesn't apply to a taxpayer in the I.R.S. Notice is the last, which states:

> "If you have any questions about the rules for filing and giving information, please call or visit any Internal Revenue Service office."

This sentence definitely doesn't apply to the

taxpayer; he is required to disclose (file). This is the only sentence that applies to the private individual and it relieves all the solicitation requirements of the Privacy Act through the word 'give'; give means gift. give is voluntary, the private individual gives.

So, the I.R.S.. solicits information from private individuals through a sophisticated fraudulent 'NOTICE'. Inasmuch as this NOTICE implements the solicitation requirements of two acts into the solicitation requirements of the Internal Revenue Code, the Internal Revenue Code is a fraud!

> 'Fraud destroys the validity of everything which it enters'
> Mudd v. Burrows, 91 U.s. 426
>
> 'Fraud vitiates everything.'
> Boyce v. Grundy, 3 Pet. 210
>
> 'Fraud vitiates the most solemn, contracts, documents and even judgments.'
> U.S. v. Throctmorton, 98 U.S. 61

Further, take Notice of the public record; the I.R.S.. has not promulgated their Notice in the

Federal Register as required by law and regulation. This is a fraud of omission.

The I.R.S.. Notice, Form 1040 and form W-4 are not published in the Federal Register. All have general applicability and legal effect under the Federal Register Act, 44 USC chap. 15. The Notice attaches to both, the W-4 certificate and the 1040 form. The Privacy Act and Paperwork Reduction Act Notice is required to be published as a 'rule' or 'regulation' by these acts and an Executive order. See Federal Register Act 44 USC Chap. 15, Sections 1501 and 1505. Also Administrative Procedure Act, 5 USC 551(4); Freedom of Information Act, 5 USC 552 (a) (1) (D) and Executive order 12291 of February 17, 1981, Sections (a) and (b)(1) and (b)(3). The I.R.S. admits to a strict interpretation of the publishing requirements of the Federal Register Act and the Freedom of Information Act:

> "Thus for example, any such matter which imposes an obligation and

> which is not so published or incorporated by references will not adversely change or affect a person's rights." 26 CFR 601, 702a (2)(ii)

Under the Freedom of Information Act, Defendant cannot be adversely affected in any way, either criminally or civilly, by a fraudulent unpublished Notice.

> "Except to the extent that a person has actual and timely notice of the terms thereof, a person may not be required to resort to or be adversely affected by, a matter required to be published in the Federal Register and not so published." 5 USC 552 (a)(1)(E)

So, the I.R.S.. deals in fraud as a matter of general policy. The Notice, Form 1040, and Form W-4 are not published in the Federal Register, either directly or indirectly as required by law and regulation.

Defendant has not received legal notification of his privacy rights as required by the Federal Register Act. Moreover, the Form 1040, W-4 certificate, and I.R.S. Notice are invalid and lack presumption of validity.

Consequently, all guilty verdicts in regard to the three count information filed against the Defendant should be dismissed with prejudice.

5. JURY INSTRUCTIONS

In his charge to the jury the judge stated:

> "The second element which the government must prove beyond a reasonable doubt, I instruct you, is that an individual taxpayer who is required by law to make an income tax return, must file his return on or before April 15, of the year following the taxable year in question.
>
> So, for the tax year 1980, Mr. Cloutier was required to file an income tax return on or before April 15, 1981.
>
> For the taxable year 1981, he was required to file an income tax return on or before April 15, 1982,and with respect to the taxable year 1982 he was required to file an income tax return on or before April 15, 1983.
>
> So, in order to satisfy this second element, the evidence must satisfy you beyond a reasonable doubt, that Mr. Cloutier failed to file his income tax return on or before April 15, following the year charged in any given count of this information." (R.T. p. 186)

There are three elements that must be proven

by the prosecution in order to sustain a 26 USC § 7203 charge. They are:

1. That the individual is required to file;
2. That the individual failed to file; and
3. That the individual's failure to file was willful.

It's plain from the reading of the trial court's instruction that the trial court judge directed a verdict of guilty to the first element (i.e. that the individual was required to file) of the section 7203 charge. This is impermissible and Defendant's right to fair trial was prejudice as the Court's error cannot beheld to be harmless.

The rule is firmly established that the trial judge cannot direct a verdict in favor of the government for all or even one element of a crime, not even an undisputed fact may be determined by the judge even if the evidence weighs heavily on the side of the prosecution. See United Brotherhood of Carpenters and Joiners of America v. United States, 330 U.S. 395 at

408; United States v. Goetz, 176 F.2d 705 (11th Cir. 1984), United States v. England, 347 F.2d 425 at 430 (7th Cir.); United States v. Aitken, 755 F.2d 188 (1st Cir. 1985) and ```United States v. Burton, 737 F.2d 439 (5th Cir. 1971). Nor, can it be said that such an error can ever be consider harmless. See United States v. Ragsdale, 438 F.2d 21 (5th Cir. 1971) and United States v. Bosch, 505 F.2d 78 (5th Cir. 1974).

Further, the court made other errors in its comments and charge to the jury.

There can be no doubt that the jury focused on the issue of willfulness. (R.T. pp. 198-201). In that regard, the trial court judge failed to instruct the jury as to the proper standard of consideration with regard to the issue of willfulness as it relates to a good faith misunderstanding of the law. United States v. Aitken, supra; United States v. Surton, supra; United States v. Geotz, supra; United States v. Phillips, Slip Op. No 84-2265 filed Oct. 17, 1985, page 2 and United States v. Murdock, 290 U.S.

389, 54 S.Ct. 223 (1933). As noted above, the trial court judge failed to inform the jury that it was Defendant's subjective state of mind that was to be considered over Defendant's objection (R.T. 199-201) and despite the fact that the Defendant, acting as pro se had submitted the jury instructions that embodied this principle that were denied. Further compounding his error and prejudicing the Defendant, the trial court judge directed the jury to find that Defendant was a tax protestor (R.T. p. 190, ln. 18) and misinformed the jury in regard to the assertion of the Fifth Amendment on a tax return stating that it could not be asserted on a tax return. (R.T. p. 189 lns. 11-14). See United states vs. Barnes, 604 F.2d 121 at 148 (2nd Cir. 1979);

> "...However, as is made clear in United States v. Sullivan, 274 U.S. 259 at 263-264, 47 S.Ct. 607 71 L.Ed. 1037 (1927), the right to make a valid claim of privilege is available even as to the amount of a taxpayer's income,..."

7. OTHER DUE PROCESS VIOLATIONS

In addition to the violation of the Defendant's

constitutional rights already mentioned there were additional Due Process violations each of which require redress from this Court

On July 21, 1986 Defendant did not appear at the scheduled time for his first day of trial although Defendant did have someone present in District court to let the trial court judge know of Defendant's whereabouts and why Defendant wasn't present. At the time trial was scheduled to commence, Defendant was at the Second Circuit Court of Appeals located in the same city as District court. Defendant was at the Second Circuit Court of Appeals to claim their protection as Defendant waited for that Court to rule on his three interlocutory claims before the commencement of his trial. (1) "Claim For Hearing on Interlocutory Appeal," Docket No. 86-30 34 (2) "Claim For Rehearing On Mandamus," Docket No. 86-30 34 and (3) "Claim For Stay Of Proceeding," Docket No. 86-80 63. Defendant

waited until the close of Court business for the day and then without a ruling, proceeded to work.

On Tuesday July 22, 1986 Defendant again went to the Second circuit Court of Appeals to wait under that Court's protection until rulings were made on his three interlocutory claims. Once again the Second Circuit failed to rule on Defendant's interlocutory claims and at the close of the court's day Defendant proceeded to work.

After work on Wednesday, July 23, 1986, Defendant was anticipating another day waiting at and under the protection of the Second Circuit Court of appeals. Before Defendant could prepare to leave he was arrested by at least 12 federal marshals and/or special IRS agents at his job at United Airlines at J.F.K airport. at that time Defendant was arrested but not read his rights. Defendant was also shackled, pushed, shoved and verbally harassed.

Defendant was subsequently brought before the trial court judge that day where he was informed trial was to commence the following day and allowed one phone call. Defendant called his wife who called the Court. Defendant's wife was given no information over the telephone except the 2:00 p.m. appearance time. Upon arriving at the Courthouse Defendant's wife was refused information with regard to Defendant and was also forbidden to talk with the Defendant during trial.

Defendant, in the meantime, was placed on a $10,000.00 cash bond which he could not satisfy and so was detained at the Manhatten Correctional Facility (MCC) over night without opportunity to prepare for trial the next day. Defendant did not have access to counsel, counsel of choice, counsel of his wife, friends or family, books, papers, pens and/or sleep in order to prepare for trial. (R.T. pp. 1-2, 11, 20, 63).

On July 24, 1986 the Defendant was removed from the MCC and brought before the court, informed of the commencement of trial, and released in the custody of his wife. During trial Defendant's last minute appointed counsel was not allowed to speak for him. Also, during the trial, the Defendant by Court order and through the efforts of the Federal marshals present was denied the opportunity to talk to or confer with his wife, family, friends and/or his counsel of choice. finally, the trial court judge went so far as to instruct the jury that the Constitution wasn't relevant (R.T. p.183).

The essential elements of due process are Notice and an opportunity to defend and acts as a bar to enactments that shock the sense of fair play. Simon v. Craft, 182 U.S. 427 and Calvin v. Press, . Here Defendant was detained and thus prohibited from preparing his defense prior to trial despite his explanation as to why he didn't have

counsel (couldn't find anyone who he could afford and would take his case) and why he wasn't in District Court on July 21, 1986. Defendant was also incarcerated pending his appeal again depriving him of an opportunity to adequately prepare his appeal.

Futhermore, fundamental rights cannot be restricted by Federal officials as they so blatantly were in this case. U.S. v. Tarlowski, 305 F.Supp 112 and Bolling v. Sharp, 347 U.S. 497. Nor, can a judge or anyone else declare the Constitution irrelevant. Economic necessity cannot justify any disregard of constitutional guarantees nor can the clear unambiguous language of the Constitution be changed. Riley v. Carter, 25 P.2d 66 and State v. Sutton, 63 Min. 147. It's hard to imagine a trial more lacking in Fundamental due process than Defendant's trial was yet Defendant knows that everyday this type of travesty of justice occurs more often and so urges this Court to

accept its mandate and reach a ruling that will end these horror shows forever.

## CONCLUSION

For all of the foregoing reasons Defendant requests this Court dismiss the charges against him and expunge his record, or in the alternative remand this cause back to District court for a retrial that comports with the ideas of fairness embodied in the Fifth Amendment.

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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Docket No.

UNITED STATES OF AMERICA,

Plaintiff/Appellee

vs.

RAYMOND CLOUTIER

Defendant/Appellant

---

INTERLOCUTORY APPEAL

---

On appeal from the unlawful decision to take jurisdiction, rendered by defacto Judge I. Leo Glasser.

---

In the above entitled action, the accused attempted to challenge the jurisdiction of the District court by presenting a "supplemental Jurisdictional Challenge, Counter complaint and Claim for Damages". Said District Court failed to

respond to the Supplemental Jurisdictional Challenge, even after the accused specifically claimed a hearing on his claims.

Failure to resolve this jurisdictional dispute can be expected to cause irreparable harm tot he accused and his rights. Thus, this court must dismiss the case or remand it for a probable cause (Grand) jury hearing.

The following issues are the focus of this interlocutory appeal:

1. Judge I. Leo Glasser failed to address Jurisdictional Challenges presented by the accused in which several fundamental rights guaranteed by the United States Constitution were set forth.

2. Judge Glasser usurped jurisdiction by entering a "plea" for the accused, after the accused had made it clear that he was exercising his right not to plead.

3. Said Glasser scheduled a trial without any

constitutional authority to do so.

4. U.S. Atty. Sean O'Shea exceeded his authority by requiring that the accused appear in court without first obtaining the required permission of a probable cause (Grand) jury.

This court is instructed not to confuse jurisdiction. It has jurisdiction to act on behalf of the accused by virtue of the constitutional provisions which protect his rights. It cannot have any jurisdiction which might jeopardize those rights, without the permission of a probable cause (Grand) jury.

Thus, the only jurisdiction the Appeals Court possesses in this matter is to correct the errors of law committed by the lower court.

Accused/Appellant (under duress)

Raymond Cloutier

CERTIFICATION

I certify that a copy of this document was sent to the U.S. Attorney, and the Grand Jury foreman.

_____

Raymond Cloutier
94-25 Hollis Court Blvd.
Queens Village, NY 11428

APPENDIX B

TRANSCRIPT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

-against- : CR-86-

: 00287

RAYMOND CLOUTIER, :

Defendant. :

----------X

United State Courthouse

Brooklyn, New York

May 1, 1986

B E F O R E :

HONORABLE I. LEO GLASSER U.S.D.J.
HOWARD GOODMAN

COURT REPORTER

EASTERN DISTRICT COURT REPORTERS

UNITED STATES DISTRICT COURT

APPEARANCES:

REENA RAGGI, ESQ.
United States Attorney for the
Eastern District of New York

By: JOHN GLEESON, ESQ.
Assistant U. S. Attorney

THE DEFENDANT: Raymond Cloutier. I am appearing as a specialty, not as a generality. I am challenging the jurisdiction of the Court.

---

THE DEFENDANT: On the address stated here.

THE COURT: Is that 94-25 Hollis Court Boulevard, Queens Village, New York?

THE DEFENDANT: Yes.

THE COURT: Mr. Cloutier --

THE DEFENDANT: I am going -- I am challenging the jurisdiction of the Court -- I am demanding all my rights and waiving none at anytime for any cause or reason.

THE COURT: Mr. Cloutier, you will have all the opportunity to challenge the jurisdiction of the Court but for now, I am going to enter a plea of

not guilty on your behalf.

I am also directing you sir, to get a lawyer. If you can't afford a lawyer, make an application to have a lawyer appointed for you. I am going to direct that you return here next week, next Thursday, the same time, 9:30 in the morning, with a lawyer or to indicate that you don't want a lawyer and want to represent yourself as you have an absolute right to do.

THE DEFENDANT: Would you enter on the record that I object to having the not guilty plea entered on my behalf?

THE COURT: The record very clearly reflects it.

THE DEFENDANT: I don't think one week is enough. This is a difficult case, not many lawyers are willing to accept it.

THE COURT: If you have a problem, you come back and tell me about that next week, but I want to see you here next week.

May 8th at 9:30.

THE DEFENDANT: Okay.

THE COURT: Is that clear? I am going to release you on your own recognizance this morning and I am going to direct that you return here at 9:30 Thursday morning. That's all, sir.

You may step out.

MR. GLEESON: Thank you, your Honor.

(End of proceedings.)

APPENDIX B

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against- CR-86-00287

RAYMOND CLOUTIER,

Defendant.

---

United States Courthouse
Brooklyn, New York

May 8, 1986
9:30 a.m.

B E F O R E :

HONORABLE I. LEO GLASSER, U.S.D.J.

HOLLY DRISCOLL
OFFICIAL COURT REPORTER

EASTERN DISTRICT COURT REPORTERS
UNITED STATES DISTRICT COURT
225 Cadman Plaza East
Brooklyn, New York 11201
(718) 330-7687

APPEARANCE:

RAYMOND J. DEARIE, ESQ.
United States Attorney for the
Eastern District of New York

By: SEAN O'SHEA, ESQ.

Assistant United States Attorney

RAYMOND CLOUTIER, Defendant

THE CLERK: Criminal status conference, U.S. Against Raymond Cloutier. Will the parties please come forward.

THE DEFENDANT: Good morning, Your Honor.

THE COURT: Good morning. State your name for the record please.

THE DEFENDANT: My name is Raymond Cloutier. I appear specially, not generally still challenging jurisdiction of the court and the IRS as I did on May 1 and object to having been forced to move forward before jurisdiction was proven pursuant to McNutt (ph) versus General Motors Acceptance Corp. 289 U.S. 178.

I demand all rights, waiving none at any time

for any cause or reason.

THE COURT: Excuse me, may I ask who you are?

MR. BELL: My name is Tom Bell. I am a friend.

THE COURT: Would you please sit in the audience. You are not a lawyer, are you?

MR. BELL: No, Your Honor.

THE DEFENDANT: I would like to have his presence here.

THE COURT: I am sorry. He is not an attorney admitted to the practice of law in this Court and his presence at the bar of this Court is not authorized or permitted.

THE DEFENDANT: Let the record show I object very strongly. I demand the charge be dismissed because the IRS has no jurisdiction. It hasn't been proven because I am not a taxpayer and I don't have a Social Security number.

I would like for the Court to rule on that right

now. Would you dismiss this now?

THE COURT: Mr. Cloutier, I think first we ought to resolve whether you wish to proceed pro se or whether you wish to retain counsel. You were here last week.

THE DEFENDANT: Yes.

THE COURT: And you said you wished to retain a lawyer. I have just been handed an application by you for an additional time to retain counsel.

Now, do you wish to proceed on your own behalf as you have a Constitutional right to do or do you wish to retain a lawyer?

THE DEFENDANT: I wish to have the case dismissed.

THE COURT: For what reason?

THE DEFENDANT: On the ground there is no jurisdiction.

THE COURT: What do you mean there is no jurisdiction?

THE DEFENDANT: Because the IRS does not have jurisdiction over a non-taxpayer.

THE COURT: What do you mean by a non-taxpayer?

THE DEFENDANT: A person that is not liable for taxes because of his status as a free man, a person who did not willfully volunteer to the system out of his free will when he was old enough to understand what he was doing.

THE COURT: Counsel, do you wish to be heard.

MR. O'SHEA: Excuse me, Your Honor?

THE COURT: Do you wish to be heard?

MR. O'SHEA: Your Honor, I don't know quite how to respond. I think there is no question but there is jurisdiction in this Court over the defendant. I think perhaps we should give him the extension to obtain a counsel.

THE COURT: Mr. Cloutier, if I understand your request that this proceeding against you be

dismissed, it is because you don't regard yourself as a taxpayer or you haven't consented in some way to be subjected to the tax laws of the United States?

THE DEFENDANT: That is only one reason I demand dismissal, Your Honor.

THE COURT: With respect to those, Mr. Cloutier, your request to dismiss this case based on those reasons is denied.

THE DEFENDANT: Well, you haven't heard all my reasons.

THE COURT: Well, I said for those reasons, the reasons that I have heard. Insofar as your request to dismiss this case for those reasons is concerned, it is denied.

Now, do you have additional reasons?

THE DEFENDANT: Yes, the IRS has no jurisdiction because the Sixteenth Amendment was never ratified. Another reason is because the charges are false. Let's see. Another reason is that they

have not proven jurisdiction and jurisdiction must be proven before we can move forward whenever it is challenged.

Since they fail to prove jurisdiction, I demand it be dismissed on that ground.

THE COURT: Mr. Cloutier, I don't know who is advising you with respect to some of these matters but based upon a citation which you read earlier, I think there may be some confusion in your mind or in the mind of whoever it is that is giving you some advice and it must be somebody who believes that he has some understanding of the law because I notice some references to case citations in this last application.

There is a difference, Mr. Cloutier, between civil proceedings and criminal proceedings. One of the reasons you have advanced for dismissing jurisdiction or dismissing this case on the basis of jurisdiction in this handwritten statement is that you weren't indicted by a Grand Jury.

Although you haven't yet raised that, I would tell you, Mr. Cloutier, that the offenses with which you are charged are misdemeanors and do not require an indictment by the Grand Jury.

THE DEFENDANT: When you are a free man and the charges, you can spend three years in jail, I think that is a very serious offense that requires a Grand Jury. If it is over a year in jail, I believe the Grand Jury should be called in. I am facing a very serious penalty here, destruction of my career, my good name.

THE COURT: Mr. Cloutier, the offenses with which you are charged are misdemeanors and not felonies and, therefore, do not require an indictment by a Grand Jury but they may be brought against you, these charges, by way of an information which is what happened.

Now, with respect to the sixteenth Amendment not being ratified, that is denied as are your requests or applications to dismiss for failure of

jurisdiction generally. As to whether these counts are false or not, these charges are false or not, that will await a trial. You are entitled to a trial by jury. You are entitled to confront the accusors against you. You are entitled to have the Government establish your guilt beyond a reasonable doubt and all of those matters would be for a jury to decide.

Now, Mr. Cloutier, you want until June 11 to retain a lawyer; is that correct?

THE DEFENDANT: Before we go through that I would like to again point out that the information itself is a very flimsy piece of paper. It is not supported by oath or affirmation like a legal warrant should be or like an indictment should be, just a type written piece of paper signed by one person, no oath or affirmation in support of.

THE COURT: There is no requirement that it be by oath or affirmation. It is enough that this charge has been brought against you by the

United States Attorney for the Eastern District and that is all that the law requires.

You want until June 11; is that correct?

THE DEFENDANT: Yes.

THE COURT: Do you have any objection to that?

MR. O'SHEA: Your Honor, no, only that the time be excluded in the interest of justice.

THE COURT: Mr. Cloutier, could you tell me where you live?

THE DEFENDANT: Well, I don't want to give testimony on myself.

THE COURT: That is not testimony, Mr. Cloutier. I have to make a determination whether to release you on bail or whether to detain you and before I make that determination, I would like to know where you live, whether you are employed in the community?

THE DEFENDANT: Yes, I am employed.

THE COURT: So I can make a bail

determination.

THE DEFENDANT: I don't see why I need bail because you released me last week and I came here.

THE COURT: I did, Mr. Cloutier, release you last week on a record which was inadequate and I want to make sure that the record adequately reflects the basis for my determination and in order that it do so, I would appreciate it, sir, if you would tell me where you live.

THE DEFENDANT: I live where the letter was sent.

THE COURT: Would you tell me where you live.

THE DEFENDANT: 9425 Hollis Court Boulevard, Queens Village, New York.

THE COURT: Are you employed?

THE DEFENDANT: Yes.

THE COURT: By whom are you employed?

THE DEFENDANT: Do I have to give that

information?

THE COURT: Yes. I want that information.

THE DEFENDANT: By United Air Lines.

THE COURT: All right.

THE DEFENDANT: I object to have to give that information.

THE COURT: Sir, I am directing you to sit back in the audience and I don't want to have to tell it to you again.

MR. BELL: Sorry, Your honor.

THE DEFENDANT: I object to my friend to be deprived of his right to help me. I think I have a right to all the help I can get. Let the record so show.

THE COURT: Give me an order of excludable delay and sign it until June 11.

I expect you to return here on June 11, I am going to release Mr. Cloutier on his own recognizance, at 9:30 with counsel and if you are not here at 9:30 on June 11 with counsel or with a

good reason why you haven't been able to retain counsel, this case will proceed against you, Mr. Cloutier, without counsel; is that clear?

THE DEFENDANT: You mean you'll deny me of my rights for counsel of choice, competent counsel?

THE COURT: Mr. Cloutier, I didn't say that I would deny you --

THE DEFENDANT: Yes, you said if I am unable to get counsel here by the 11 of next month, the Court will proceed without counsel. That is a threat of denying me my rights of counsel.

THE COURT: Mr. Cloutier --

THE DEFENDANT: Pursuant to Burgett versus Texas (ph) 389 U.S. 109 I think you should disqualify yourself for being prejudice against me:

THE COURT: Mr. Cloutier, you are released on your own recognizance until June 11. I expect you to return at that time with counsel.

THE DEFENDANT: Have a nice day.

THE COURT: Anything further.

MR. O'SHEA: Not on Cloutier, Your Honor.

(End of proceedings.)

APPENDIX B

TRANSCRIPT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

-against- : CR-86-00287

RAYMOND CLOUTIER, :

Defendant. :

----------X

United States Courthouse
Brooklyn, New York

June 11, 1986
9:30 a.m.

BEFORE:

HONORABLE I. LEO GLASSER, U.S.D.J.

HOWARD GOODMAN
COURT REPORTER

EASTERN DISTRICT COURT REPORTERS
UNITED STATES DISTRICT COURT
225 Cadman Plaza East
Brooklyn, New York 11201

APPEARANCES:

RENNA RAGGI, ESQ.
United States Attorney for the
Eastern District of New York

BY: SEAN O'SHEA, ESQ.
Assistant U.S. Attorney

MR. CLOUTIER: I am under duress. I don't want to grant jurisdiction by moving forward.

THE COURT: Mr. Cloutier, have you retained counsel yet?

MR. CLOUTIER: Yes, my counsel is with me here.

THE COURT: You represent Mr. Cloutier?

A VOICE: I am willing to do it, as soon as the Court honors my right to do so. I am not an establishment attorney, but under the Constitution, if he wants me he has a right to have me.

THE COURT: I don't understand what it is you are saying. Why don't you come up?

A VOICE: This is a public trial and other people should hear --

THE COURT: It's a public courtroom. It should

be open to the public. If you are an attorney, I would ask you to approach the bench and not your appearance, if you are going to represent Mr. Cloutier.

A VOICE: I already said that I do not.

THE COURT: Sir, would you be kind enough to approach the bench?

A VOICE: If you insist. I am coming up under protest.

THE COURT: What is it that you are protesting?

A VOICE: the fact that you required me to come forward. The people in the audience should be able to here me.

THE COURT: I don't know of any courtroom in the United States where the attorney addresses the Court from the public area.

Are you an attorney admitted to practice law in this state?

A VOICE: I have already said that I am not.

THE COURT: You are not an attorney? What is

your status; who are you?

A VOICE: My status is that of a free citizen who has the right to help, to counsel, other free citizens if they request his help.

THE COURT: If you are going to presume to act as his attorney--

A VOICE: I am not.

THE COURT: Mr. Cloutier has been advised

well over a month ago to obtain counsel --

MR. CLOUTIER: And I did.

THE COURT: Or else with regard to Mr. Cloutier, he would have elected to proceed on his own behalf.

A VOICE: That would be an invalid presumption, sir --

THE COURT: What is your name?

A VOICE: Mr. Milinsky.

THE COURT: I do not want to delay these proceedings indefinitely, until Mr. Cloutier decides in his own good time that he will or will not retain an attorney. I have given him --

MR. CLOUTIER: I retained counsel --

THE COURT: Sir, if you wish to address the Court come forward.

MR. CLOUTIER: I don't wish to come forward. I am here under duress.

THE COURT: Did you make a motion in this Court, Mr. Cloutier?

MR. CLOUTIER: I have rescinded that motion. I made claims --

THE COURT: Mr. Cloutier, I am going to set this case down for trial. You can either appear with counsel or represent yourself, but I am going to set it down for trial. I will select a jury and we'll proceed to hear those charges against you.

Now, you can attend and represent yourself or you can attend with counsel --

MR. CLOUTIER: With Mr. Milinsky --

THE COURT: Mr. Milinsky will not be permitted to represent you in this Court as an attorney.

MR. CLOUTIER: Under the Constitution of the United States, any man can represent any other man.

THE COURT: Mr. Cloutier, you may represent yourself but Mr. Milinsky will not be permitted to represent you in the capacity as an attorney, because he has not been admitted to practice law in this state or has not been admitted to

practice in this Court.

MR. CLOUTIER: That's unconstitutional –

MR. MILINSKY: If I may say sir, Mr. Cloutier didn't claim that I was an attorney. He claimed me as his counsel. There is a difference --

THE COURT: It may make a difference to you but it makes no difference to me.

MR. MILINSKY: As I understand it, it's a violation of law if you don't honor me as counsel --

THE COURT: You can argue that in some form, perhaps at some other time.

I propose to go forward with this case. This case will not be delayed indefinitely by Mr. Cloutier's intransigence to put it mildly -- in refusing to appear at the Bench of this Court and in refusing to retain counsel and in refusing to recognize the jurisdiction of this Court, after I have already ruled on his motions.

MR. MILINSKY: If I may say sir, you don't have the authority to rule until you get jurisdiction. You

don't have jurisdiction--

THE COURT: I have determined that I have jurisdiction. I ruled on Mr. Cloutier's motion to dismiss these charges and I denied them. He has moved to dismiss on the grounds that he has to be charged with, by way of an indictment. I advised him that this is a misdemeanor and does not require an indictment and that charges with regard to a misdemeanor may be brought by way of an Information --

MR. MILINSKY: May I ask if that appears in the Constitution -- because the Constitution says that a trial of all crimes shall be by jury –

THE COURT: There will be a trial by jury, sir.

MR. MILINSKY: I am talking about the indictment --

THE COURT: There is no need for an indictment. This is not regarded as a capital offense. I am not here Mr. Milinsky to advise you with respect to the law. I have made my

determination with respect to Mr. Cloutier's motion and I am going to set this case down for trial. We'll select a jury and I will hear the government's presentation of its case and Mr. Cloutier may, if he wishes to appear, to represent himself or appear with counsel and by counsel, I mean an attorney who has been duly admitted to practice law in this state; who is duly admitted to the practice of law in this Court or Mr. Cloutier may represent himself but this case will go forward.

I am going to fix a trial date. July 21st is the --

MR. MILINSKY: I would like the record to show that you are breaking the law at 9:30 --

MR. CLOUTIER: Lack of counsel, of choice, can be conceivably even worse than no counsel at all, or having to accept counsel beholding to one's adversary. That's in Burgett versus Texas at 389 U.S. 119.

I don't presume to grant jurisdiction to the court by forwarding cases in equity --

THE COURT: This case has been set down for trial on July 21st at 9:30 a.m.

MR. CLOUTIER: You haven't heard all of my argument of counsel for choice --

I was planning to ask for more time, if I appear by myself. I need to prepare this case

THE COURT: This case has been set down for trial on July 21 at 9:30 a.m.

MR. CLOUTIER: July 21st at 9:30 a.m. –

At this time, I claim my right to have a different Judge reassigned in this case. You have shown extreme prejudice and I need and want a fair trial –

THE COURT: Mr. Cloutier, you will be given as fair a trial as is humanly possible to give you --

MR. CLOUTIER: It's not possible with a Judge who is prejudice and won't honor my rights.

THE COURT: Your application that I recuse myself is denied.

MR. CLOUTIER: What is denied?

THE COURT: Your application that I recuse myself is denied.

MR. CLOUTIER: I have a right to recuse you --

THE COURT: You make an application, Mr. Cloutier that I recuse myself, which I understand you have just done and I have denied it.

MR. CLOUTIER: In that case, I want to recuse you personally -- I am asking you to honor my claim that you appoint a different Judge.

THE COURT: Mr. Cloutier --

MR. CLOUTIER: I am entitled to one, to eliminate a Judge without cause. I think that I have sufficient reasons to do it with cause in your case.

THE COURT: Mr. Cloutier, these proceedings are terminated. I direct you to proceed either to retain counsel or to appear with counsel or by yourself or with counsel on July 21st at 9:30 a.m. when this case will be called.

MR. CLOUTIER: Are you directing me to

appear on July 21st; are you ordering me to appear?

THE COURT: I am telling you that this case has been set down for trial on July 21st. If you don't appear, I will proceed to try you in absentia.

Mr. Cloutier, do you have anything else to say this morning?

MR. CLOUTIER: If I don't appear, will you have me arrested?

THE COURT: Mr. Cloutier, I have told you sir, that if you fail to appear and do not appear voluntarily, I may either issue a warrant for your arrest Mr. Cloutier or I will proceed against you in absentia. The likelihood is that I will issue a warrant for your apprehension.

I am going to release you on your own recognizance--

MR. CLOUTIER: Before I leave, I would like to point out that the supreme Court has often ruled on the rights of the defendant to have a layman

for counsel. I want you to be fully aware that you are subjecting yourself to a Title 42 civil rights action by denying me counsel; do you understand that?

I would like to quote this case -- where an accused must be provided the counsel of his choice. He must be given an opportunity to do so. It's Chandler versus Fregag -- it says nothing about a licensed attorney That's all I have to say.

(End of proceedings.)

APPENDIX B

TRANSCRIPT

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

----------X

UNITED STATES OF AMERICA, :

: CR-86-

-against- : 00287

RAYMOND CLOUTIER, :

Defendant. :

----------X

United States Courthouse
Brooklyn, New York

July 23, 1986
9:30 o'clock a.m.

BEFORE:

HONORABLE I. LEO GLASSER, U.S.D.J.

ROBERT FAZIO
Official Court Reporter

APPEARANCES:

MR. ANDREW MALONEY
Acting United States Attorney
for the Eastern District of New York

BY: MR. SEAN O'SHEA
Assistant United States Attorney

MR. RAYMOND CLOUTIER
APPEARED IN PROPRIA PERSONA

MR. O'SHEA: Good morning, Your Honor.

THE COURT: Good morning. Good morning, Mr. Cloutier.

MR. CLOUTIER: Good morning.

THE COURT: A warrant has been executed and he's here pursuant to the execution of that warrant. I suppose we ought to deal with the question of bail.

MR. O'SHEA: At this time the government would move to detain Mr. Cloutier given his actions which have been nothing but contempt for this Court.

In addition Mr. Cloutier, every time he has appeared, has been late and has been refusing

to submit to the jurisdiction of this Court. In fact I received a book from his wife, book entitled: Death of a Patriot by Andy Melechinski, a person appearing in this Court before seeking to represent Mr. Cloutier. Mr. Melechinski was an associate of Cordon Kahl and this book about Gordon Kahl, who as a result of his flight, a bench warrant was issued and he ended up shooting two United States marshals.

Mr. Melechinski was an associate of Gordon Kahl. Mr. Cloutier has followed the blue print suggested in Death of a Patriot.

THE DEFENDANT: because I tell the truth.

MR. O'SHEA: For refusing to submit to the jurisdiction of the Court, including seeking to represent himself, denying jurisdiction in the Court.

In addition, Your Honor, we have given Mr. Cloutier every opportunity after Your Honor stayed the bench warrant, by trying in every way we could, to give him notice to appear. Finally,

Mr. Cloutier, after he was arrested by the marshals has failed to give them any personal information whatsoever in cooperating after.

THE DEFENDANT: That is not true. I gave them my name.

MR. O'SHEA: For these reasons, the Government would submit that Mr. Cloutier's bail conditions should be revoked and he should be detained.

THE COURT: Mr. Cloutier would you like to respond to that.

THE DEFENDANT: Yes I would. First of all.

THE COURT: I don't hear you.

THE DEFENDANT: Pardon me. Mr. Melechinski was not an associate of Kahl. he didn't live in this same part of the country and second of all, I didn't follow any blue print.

You received that book to show Government abuse of citizens. You didn't receive it as a blue print for shooting people. I do not believe in

going around and shooting people. I have never been charged with a crime before, anything greater than a traffic violation.

Now about this bail business, I would have appeared in this court if I believed you had jurisdiction and if I didn't have an interlocutory appeal before the Second Circuit. I was there yesterday trying to get a ruling on it. I was there all morning and I am sure this Court was aware of it because you communicated by telephone all the time. I don't remember everything they said.

I still feel that the Court doesn't have jurisdiction and I believe that warrant was just a threat that was not in fact issued and was just there to cause me to give up my jurisdiction to the Court by trickery.

I was only there late and that was the first time and that was because of traffic and I work nights and it's very difficult for me to get here at 9:30 when I punch out at 8:30.

THE COURT: You were scheduled to appear in this Court on the 21st of July which was Monday.

MR. CLOUTIER: I had an appeal in the Second Circuit and everything should have stopped until the appeal was heard.

THE COURT: The appeal or the application which you made in the Second circuit was denied.

MR. CLOUTIER: Not the jurisdiction appeal just the mandamus was denied. The other issues were not answered yet.

THE COURT: Mr. Cloutier, I determined sometime ago in response to your objection to the jurisdiction of this Court, that this Court does have jurisdiction.

MR. CLOUTIER: I don't see how. You never had a Grand Jury permission and I didn't give you permission. Where did the permission come from? The Constitution doesn't permit United States Attorneys to just assume jurisdiction over a

person and draw him into Court. They have to have permission from the people.

THE COURT: I have attempted to explain to you that you're not charged with a felony.

MR. CLOUTIER: Some of the paperwork they put in my file shows that.

THE COURT: It might be helpful if you listen to the explanation I am trying to give you. I've tried to give you this explanation before and I am making an effort to give it to you again.

I've explained to you before and I'll explain to you again, neither the Constitution nor any statute or rule with which I'm familiar requires that a person who is charged with a misdemeanor must be charged by an indictment returned by a Grand Jury. It's sufficient, if charged with a misdemeanor, that the charge is brought in a document called an information which is signed and returned by the United States Attorney for the Eastern District.

You are charged with a misdemeanor, three of them for that matter, and you are charged in an information returned by the United States Attorney. You've challenged the propriety of that before and I have ruled with respect to that challenge.

I've determined, Mr. Cloutier, that the information is proper and that this Court does have jurisdiction over the charge which is brought against you by that information.

I've also determined that the Court has jurisdiction over you. you were advised of that sometime ago. You were also advised sometime ago of the desirability of obtaining counsel -- retaining counsel. I advised you sometime ago, as well, that if you couldn't afford to retain a lawyer, we would assign a lawyer to represent you if you completed the appropriate application for that purpose.

You indicated to me that you did not wish to

complete such an application and therefore I was precluded from assigning counsel to represent you. You asked me for an adjournment to get a lawyer and I granted you such an adjournment. As a matter of fact, I think I granted you two adjournments to retain counsel and you have refused to do it.

now, that is your right. You have a right to represent yourself. The Constitution gives you that right. I take it that you chose to represent yourself which you may do. Now, not having appeared on Monday and not having appeared on Tuesday, I issued a warrant for your arrest and you are here today pursuant to the execution of that warrant.

I am covering the question of bail. I'd like to know, Mr. Cloutier, first, where you live. If you will answer that question?

THE DEFENDANT: I will answer that. First, I would like to answer some of the things you brought up.

I don't believe you offered me a lawyer as you just stated. You just asked me if I could afford a lawyer, if I remember correctly and I found out I can't afford the high fees. Most of them are not competent and they have sworn allegiance to the Court and everybody else and the client comes last.

I tried to find competent counsel and I think Mr. Melechinsky was competent to help me. On two occasion you denied counsel. You denied Mr. Melechinsky and Mr. Bell when they tried to aid me.

THE COURT: I explained to Mr. Melechinsky and Mr. Bell and to you that persons who are entitled to act as lawyers in this Court are persons who must have been admitted to the bar of this Court.

MR. CLOUTIER: You don't have to explain that to me again. I am aware of that.

THE COURT: The problem--

MR. CLOUTIER: There is no place in the Constitution where it says a person must be a member of the bar. In the Supreme Court on many occasion stated that anyone could represent anyone at any stage and the choice of counsel is unqualified and it's an antitrust crime to have a monopoly with respect to representing clients.

Now, it I can represent myself and they say a person who represents himself has a fool for a client. If the court allows me the right to be a fool why won't they let a friend of mine help me? surely a friend would be as valuable as the fool. I don't see why the Court wants to break the law. You should set examples. You say I broke a law, which I don't think I did. Show me that you will obey the law instead of breaking the law by violating my rights.

THE COURT: Mr. Cloutier, if at some later stage following the trial of this case and should the Jury

return a verdict of guilty –.

MR. CLOUTIER: Yes, that is very interesting since--.

THE COURT: Why don't you wait until I finish.

MR. CLOUTIER: I forget what I have to say. I am not trained in matters of law.

THE COURT: I am trying to explain it to you.

MR. CLOUTIER: You did it before.

THE COURT: I am sorry Mr. Cloutier, what I am trying to explain to you is that there is an orderly process which must be observed by me and must be observed by your. That orderly process is a process which is prescribed for me by the rules of this Court, by rules which have been adopted, by rules and they are known as the Federal Rules of Criminal Procedure, by the statutes enacted by Congress which are found in Title 18 of the United States Code, in your case, and by the rules with respect to the orderly procedure of a trial as I prescribe them. It's not

for me to determine the orderly conduct of the trial and for me to determine and interpret the rules which guide me and which guide all of us.

Now, if after a trial, Mr. Cloutier, should you be convicted of the charge against you feel and believe that I have violated some rule or you believe that this trial has not been conducted in accordance with the due processes of law, the orderly procedure for you to follow is to appeal that determination. Should you be acquitted, that would be the end of this case. Should you be convicted, I will impose sentence at a future date and you may then appeal that sentence to a hire Court, which is the United States Court of Appeals for the Second Circuit with which you are familiar.

That is the procedure which I intend to follow in this case. That is the procedure which you will follow in this case because that is the procedure which is prescribed by the Constitution, by Rule

and by Case Law.

Now, the way to challenge, Mr. Cloutier, the propriety of this proceedings and the trial which will insue, is to appeal an adverse determination which may be made. That is the way an orderly society and an orderly judicial system functions and that is the way the system will function in your case as it does and will as long as I am sitting here, in every case which appears before me.

MR. CLOUTIER: I did it.

THE COURT: Let me get back to the bail question.

MR. CLOUTIER: Could I say something first? I did appeal the determination you had made in the Second Circuit. This Court did not honor or did not wait for it to be determined. Besides the supreme Court has ruled that you cannot use rules and legislation and law making to abrogate the rights guaranteed by the Constitution of the United States. I believe it was Miranda versus

Arizona.

THE COURT: Mr. Cloutier, again, I have determined that I am abiding by the rules as they have been prescribed. I have determined that I have jurisdiction over this matter and I propose to exercise it. Now, if you wish to participate, Mr. Cloutier, in this application for bail and respond to my questions, I'll proceed with it.

MR. CLOUTIER: Okay.

THE COURT: The Government is asking, Mr. Cloutier, so that you understand that, that I detain you, that I issue an order of detention and not fix bail for the reason that they believe and they ask me to determine that no condition of vail will assure your presence and appearance in this Court. They ask me to make that determination based upon the fact that you did not appear in this Court on the 21st of July, that you did not appear in this Court on the 22nd of July and that a warrant for your arrest had to be issued.

Now, you can respond to that if you wish, and then I'll ask you some questions and make a determination, Mr. Cloutier, as to whether there are any conditions over bail which will assure your presences in this Court.

MR. CLOUTIER: I appeared in the Second Circuit. I was not trying to evade justice. I was trying to get justice and due process and I appeared previously.

THE COURT: Mr. Cloutier, where do you reside?

MR. CLOUTIER: Same place, 9425 Hollis Court Boulevard, Queens village, New York, 11428.

THE COURT: Are you married?

MR. CLOUTIER: Yes.

THE COURT: Do you have any children?

MR. CLOUTIER: Yes.

THE COURT: How many and how old are they?

MR. CLOUTIER: I have one who is 18.

THE COURT: Does he reside with you?

MR. CLOUTIER: Yes.

THE COURT: By whom are you employed?

A United Airlines. They know they arrested me over there this morning.

THE COURT: How long have you been employed there?

MR. CLOUTIER: 28 years.

THE COURT: I beg your pardon?

MR. CLOUTIER: 28 years.

THE COURT: Do you have any other family?

MR. CLOUTIER: Not in the area, no. My wife and son is my only family.

THE COURT: How long have you lived at your current address?

MR. CLOUTIER: About a dozen year or so.

THE COURT: Is that an apartment or is that you own home?

MR. CLOUTIER: It's an apartment.

THE COURT: You've lived there for 12 years?

MR. CLOUTIER: Longer than that. At least 12 years.

THE COURT: Mr. Cloutier, I've been asked to deny bail for the reason that there is no probable assurance that you will appear in this Court as you are required to do. Do you wish to respond to that?

MR. CLOUTIER: Yes, the only reason I didn't appear is because I thought I was before the Second circuit, and you were trying to trick me into giving up jurisdiction. Now there is no reason for me not to appear because my presence will not grant jurisdiction voluntarily to the Court. I will come in as I did the first two times that I was here.

THE COURT: Do you want to respond to that, Mr. O'Shea?

MR. O'SHEA: Yes, Your Honor.

I fear in this case that Mr. Cloutier is playing games with this Court. He was on notice yesterday. Several times my agent called to

give him notice that this Court had issued a bench warrant, and that he should appear. In addition, Your Honor, I called his apartment and left messages saying that this Court had issued a bench warrant and explained to him the reasons why. I feel that Mr. Cloutier will further try to delay this Court and be as obstructing as he can by these appeals with no merit, claims for re-hearing, basically bogus arguments relating to jurisdiction, and will not appear.

THE COURT: Mr. Cloutier?

MR. CLOUTIER: I asked you to prove jurisdiction before when I was here in Court, and you never proved jurisdiction. you side-stepped my jurisdictional challenge, and this is all I was doing, challenging jurisdiction. I do not want to grant jurisdiction that does not exist.

THE COURT: Mr. Cloutier, I have indicated to you now, this is I think the 4th time, I have made a determination that I have jurisdiction.

MR. CLOUTIER: I understand that, Your Honor. You don't have to repeat it. I was stating my position. I was trying to show why I was not here. I was trying to show my good faith. I was not trying to avoid or evade the law. I was trying to get my rights.

THE COURT: Am I to understand from you Mr. Cloutier, that you persist in challenging the jurisdiction of this Court, and by virtue of that challenge, do not intend to appear in this Court?

MR. CLOUTIER: No, that is not so. Now that you have abducted me and brought me here, I think I no longer have to --

THE COURT: If I fix bail, Mr. Cloutier, --

MR. CLOUTIER: Before you say anything more, I want to say more: Go ahead I forget what I have to say.

THE COURT: If I should fix bail, Mr. Cloutier, and should you fail to appear, assuming that you post bail, you will forfeit the amount of bail that has

been posted, and you will also, Mr. Cloutier, perhaps subject yourself to some additional penalties which are prescribed by the Constitution for violating conditions of release and not appearing in this Court, and should you fail to appear during the course of this trial, I will proceed without you.

Do you understand that?

MR. CLOUTIER: Yes. I don't believe it's necessary for you to fix bail. I would gladly come down now, now that I have proven my point that I did not grant jurisdiction.

THE COURT: Anything further?

MR. O'SHEA: Your Honor, I feel that if Mr. Cloutier is granted bail, he will again present this Court with these arguments which can not be responded to because Mr. Cloutier subscribes to the views of an organized group of tax protesters, and is sprouting their philosophies to this Court. This has happened before in these

cases. These people come to Court when they feel it's time to give Forth their personal beliefs about tax.

MR. CLOUTIER: Don't associate me with these people. I don't belong to an organization. I am asking for my rights as written in the law.

MR. O'SHEA: Excuse me, sir. Your Honor, I feel that if Mr. Cloutier is released, he will again play games with this Court and not appear.

MR. CLOUTIER: I won't play games more than you calling me like that. I thought I was supposed to get direction from the Judges secretary. If people call up on the phone and tell me there Joe Blow and I have to show up in Court, why should I believe that?

MR. O'SHEA: I informed you that the Judge directed

me--.

MR. CLOUTIER: That is hearsay.

THE COURT: We are going to proceed with

this case now.

I am going to fix bail in the amount of ten thousand dollars cash. If the bail is posted, Mr. Cloutier, you may be free to leave and continue to appear in this Court during the course of this trial. We are going to proceed, Mr. Cloutier, and I am going to bring the Jury up and we are going to impanel a Jury and we are going to proceed to the trial of this case.

All right sir. Do you have any questions you want to ask me before we do that?

MR. CLOUTIER: I don't know why the bail has to be so excessive.

THE COURT: I am fixing the bail in that amount based upon--.

MR. CLOUTIER: Why do you believe I won't show up when I have been in Court every day trying to get justice.

THE COURT: Based upon the past experience which I've had over the past days in

connection with this proceeding, that is the bail which I have set.

MR. CLOUTIER: Could I see the instrument that was issued for my arrest? I haven't seen it yet.

(Furnished to defendant by Court.)

MR. CLOUTIER: Can I have a copy of that.

THE COURT: Mr. Cloutier, we'll be happy to let you examine whatever documents are in the file at the appropriate time. Take you seat at Counsel's table, Mr. Cloutier. I will impanel a Jury and we will proceed to hear evidence in this case.

I want to advise you that you're under no obligation, Mr. Cloutier, to either testify on your own behalf, or call any witnesses on your own behalf.

I think you are aware of the fact, and if you're not, I am advising you that you are presumed to be innocent of these charges, and the Government is under an obligation to prove

those charges and to prove them to the satisfaction of a unanimous Jury beyond a reasonable doubt.

The Government will attempt to do that and I will instruct the Jury at the appropriate time as to what it is that they must find the Government has established beyond a reasonable doubt before they can return a verdict of guilty.

I will advise them that if they do not find that the Government has established the required elements of this offense beyond a reasonable doubt, then they should acquit you.

Mr. Cloutier, I also want to advise you that you will be bound by all the rules which would bind anybody appearing in this Court.

MR. CLOUTIER: That is not fair because the Supreme Court has ruled that rules have to be less stringent when a person represents himself. I think maybe you should appoint me somebody to help me, provided he's qualified and will use

the Constitution of the United States, and will not sell me out by making deals that I can't --

THE COURT: Mr. Cloutier.

MR. CLOUTIER: That I can't stop.

THE COURT: I have advised you on at least two separate occasion of the desirability of you retaining counsel.

I think I first granted you an adjournment to a day in June, and I subsequently granted you another adjournment to July 21st, giving you almost two months to retain counsel in this case.

MR. CLOUTIER: At the time I wasn't aware how hard it was to get counsel, and how expensive it is an dhow unwilling or scared they were of the IRS. Most attorneys want to take a case because if they defend a client who had gotten audited, it's a very difficult task to get counsel.

THE COURT: Have you attempted to obtain counsel?

MR. CLOUTIER: Yes, I did.

THE COURT: Who have you consulted?

MR. CLOUTIER: I have a list, but they dock me -- I don't have the list with me.

I wrote many letters. Most of them didn't answer at all.

THE COURT: Lets take a brief recess for about ten minutes.

(Whereupon a recess was taken until two o'clock, after which the following transpired.)

THE COURT: Please be seated.

First, I'd like the record to reflect that I appointed Mr. Thomas Concatenate, who is the chief of the Federal Defender Service in the United States District Court for this district to assist Mr. Cloutier.

I think Mr. Concatenate has been with him for approximately three hours or more.

Would you not your appearance for the record.

MR. CONCATENATE: Thomas Concatenate.

THE COURT: Are we ready to proceed.

MR. CONCATENATE: We are.

I believe that it may still be fruitful to wait a few more moments because Mr. Cloutier is considering, with his family and friends, an offer to plead guilty to the third count of the information. It is my understanding that that would be acceptable to the Government in that they would move to dismiss the open counts. It's very complicated, but you know more about that than I do, and he's got some friends who are in the courtroom....

APPENDIX B

TRANSCRIPT

PAGES 63-76

We are waiting for one juror. As soon as he arrives, we'll start.

MR. O'SHEA: We are going to use the delay to allow Mr. Cloutier to go through all our exhibits. We gave him the opportunity by letter and he never took that but in order to speed things up, he'll look through them no.

THE COURT: Is the Government ready.

MR. O'SHEA: Yes, Your Honor.

THE COURT: Mr. Cloutier, are you to proceed.

THE DEFENDANT: No, I am not. I have been completely unable to prepare anything. I didn't even have a piece of paper to write on. I have been deprived of a chance to prepare for this trial. The attorney appointed for me is obligated and has done very little to help me other than suggest that I plead guilty. I claim a mistrial.

THE COURT: Mr. Cloutier, you application for a mistrial is denied. With respect to an opportunity to prepare, this case has been brought on in this Court almost two months ago. It seems to me that you've had more than a adequate opportunity to prepare for this case.

Get the Jury.

THE DEFENDANT: I didn't have counsel.

THE COURT: You were advised a long time ago of the importance of obtaining a lawyer and I have given you two adjournments and you haven't taken advantage of all that time which was given to you.

THE DEFENDANT: I did my best to take advantage of it.

THE COURT: Mr. Cloutier, if you're asking me for a continuance, it's denied and we'll proceed with this case.

Get the Jury.

(Whereupon the following was had in the

presence of the Jury commencing at 11:05 A.M.)

THE DEFENDANT: I object to that.

THE COURT: Your objection is noted.

(In the presence of the Jury.)

THE COURT: Good morning. Please be seated. I want to apologize for the delay.

Call your next witness.

MR. O'SHEA: Thank you. government calls Marie Meyer.

M A R I E M E Y E R, called as a witness by the Government, was duly sworn to tell the truth, the whole truth, and nothing but the truth, testified as follows:

THE CLERK: Give your name.

THE WITNESS: Marie Meyer. M E Y E R

DIRECT EXAMINATION

BY MR. O'SHEA:

Q How are you employed?

A I work at the Brookhaven Service Center for

the IRS.

Q How long have you been employed there?

A 14 years.

Q What are you employed -- how are you employed?

A Manager for the Resolution Unit.

Q Is that your current assignment?

A Yes.

Q Are you familiar with the business practice of the IRS?

A Yes, I am.

Q I am going to show you what has been marked as Government 1 for identification and ask you if you recognize this document.

(Furnished witness.)

A That is a transcript of tax returns filed from the year 1967 to 1983 – 1972, 1978 – through 1978.

Q Is the transcript you have just identified kept in the ordinary course of business by IRS?

A Yes.

Q It is part of the business of IRS to keep such transcripts and records?

A Yes, it is.

MR. O'SHEA: Your Honor, the Government moves Government's 1 into evidence.

THE COURT: Have you seen that Mr. Cloutier?

THE DEFENDANT: I see.

I object to all this stuff because I don't have competent counsel to advise me on it. I have a counsel. He's not even allowed to speak for me. I have no legal training and last night I didn't have a sheet of paper to prepare this case and I spent most of the time in iron when it was completely unnecessary.

I also would like to claim that you step down as a Judge because you've shown that you have been prejudiced.

THE COURT: Would the Jury please step out.

(Whereupon the following was had out of the

presence of the Jury.)

(Whereupon, the following proceedings were had at sidebar, outside the hearing the jury commencing at 11:20 a.m.)

THE COURT: Mr. Cloutier, come up here please.

(Whereupon, defendant approaches sidebar)

THE COURT: Sir, it would displease me very very much and make me very very unhappy to have to remove you from this courtroom by virtue of your conduct. I am trying desperately Mr. Cloutier to avoid doing that.

THE DEFENDANT: I understand that.

THE COURT: I would ask you to please listen Mr. Cloutier.

THE DEFENDANT: I want to make a point. When you go in talking a long time I forget what I have to say and I can't answer the reason why I'm saying that. I must interrupt to be able to put

some kind of defense in. I'm not trained in the law. I never went to college.

THE COURT: Mr. Cloutier, I have tried to explain these things to you before. I've attempted to explain to you before the importance of having a lawyer. I've attempted to explain to you before --

THE DEFENDANT: I understand that. I tried to get a lawyer. I find most of them are afraid of the IRS and don't want to represent me. They want so much money. I would spend two lifetimes trying to pay for it. I can't afford to buy justice at those prices.

THE COURT: I'm awfully sorry to have to request this of you but would you be kind enough to wait outside?

(Whereupon the jury exited the courtroom and the following proceedings were had out of the presence of the jury.)

THE COURT: Mr. Cloutier, what we're really

dealing with is an effort upon your part to obstruct the prosecution of this case and to delay the prosecution of this case.

THE DEFENDANT: I'm trying to get justice.

THE COURT: Mr. Cloutier, I'm doing everything that I know how to give you as fair a trial as I'm capable of giving you. I'm trying desperately sir to avoid or refrain from holding you in contempt and refraining from removing you from the courtroom and having the case proceed in your absence. I'm trying very very hard, Mr. Cloutier to avoid all that. You are charged with the failure to file a tax return. The issue which is for the jury to determine is whether you are obligated to file a tax return and whether you failed to file a tax return and whether your failure to do so was willful. Those are the only questions that are going to be presented to the jury.

With respect to your appearance here pro se,

I've attempted to urge you in every way I know to get a lawyer. We cannot, Mr. Cloutier, in the ordinary scheme of things delay the presentation of this case which the government has a right to present.

THE DEFENDANT: I agree with that but you want me to get a lawyer who is part of a Bar that they're brothers together. They stick together and they swore allegiance to the Court and the last person in mind is the defendant. You want me to get a lawyer who is beholding to the government and to the establishment. You want to guarantee a loss.

THE COURT: Mr. Cloutier, I really am at a loss as to what else to say to you beyond saying to you sir that if you will continue to persist in these outbursts and you continue to disrupt this trial, you will lave me with no alternative but to have you removed from the courtroom which I would very very much dislike doing.

With respect to these computer printouts, pursuant to what rule of the Federal Rules of Evidence are you offering it? If you are offering it as a business record, Mr. O'Shea, I think that 803.8, which deals with public records would be applicable where you're dealing with a public record and not 803.6 dealing with business records. So you're not dealing with a business record in that sense, you're dealing with a public record, a record which is maintained by a public agency. You are attempting to offer this public record against the defendant in a criminal case and I would ask you, sir, whether that computer printout is admissible under 803.8 and in that regard, you may wish to examine United States versus Oates and Ruffin unless there is something about either one of those cases which I am not understanding and which would suggest that this computer printout is admissible – it's not coming in as a business record under 803.6. That is a public

record.

Under 803.8 I think if you look at Ruffin and Oates you may find that it's exclude.

(Whereupon Court furnishes document to Mr. O'Shea.)

(Sidebar concluded at 11?25 a.m. after which the following transpired out of the presence of the Jury.)

THE DEFENDANT: I object that you take the Jury out. I want the Jury to hear everything.

THE COURT: Mr. Cloutier, first let me explain to you, sir, and this is probably the third or fourth time that I've had occasion to do it. When you first appeared in this Court, you asked me for an opportunity to obtain a lawyer and I gave it to you. When you next appeared in this Court you told me you still–

THE DEFENDANT: My I ask you a question. Why did you take the Jury out? Why can't they hear this?

THE COURT: Mr. Cloutier, the colloquy, the discussion that I am having with you, does not pertain to any of the evidence in this case.

THE DEFENDANT: The Jury has the right to hear the law as well as the facts. It's a long-known right. Just because recent Courts deprived them of that right does not make it correct, and I move for a mistrial on that account also.

I claim a mistrial.

THE COURT: Your application on that count and for that reason is denied.

THE DEFENDANT: I object to the denial.

THE COURT: Your objection is denied. It is recognized. It is overruled. It's a mater of record, and Mr. Cloutier, you will have an opportunity, in the event that there may be a conviction in this case, to ask the Court of Appeals to pass upon the validity or correctness of my ruling.

THE DEFENDANT: I understand that, but what I want to know is why this Court can't give me a fair

trial? Why do I have to go through the time in jail because you won't give me a fair trial? I shouldn't even be here. I never had a Grand Jury indictment. No one gave you authority to try me. The Constitution does not give the government authority to try me. I never gave you permission to try me, and if I did, anything that you think that gives you permission, it was done out of ignorance, through fear and coercion, without my getting full disclosure.

I want the record to clearly show that, and I would like the Jury to hear it.

THE COURT: Mr. Cloutier, I've determined that this colloquy, this discussion between you and me, is not appropriate for the Jury to hear.

THE DEFENDANT: I think it is appropriate, and it's me on the hot seat.

The Court: Mr. Cloutier, I will also tell you, sir, that if you're dissatisfied with the rulings I'm making, you have a remedy. there is an orderly process

for making objections and for passing upon or commenting upon rules of evidence or offers in evidence which are being made.

I will not, Mr. Cloutier, tolerate a disruption of this trial, and I want to put you on fair notice of that.

If you have objections to evidence which is being offered, make them and I'll rule on them. If you have some doubt as to whether the evidence is admissible, Mr. Concannon, who is a very experienced criminal lawyer in this Court, will be able to advise you.

With respect, Mr. Cloutier, again, for the fourth time, with respect to your claim that you haven't had an adequate opportunity to prepare, this case has been pending in this Court for months. I've advised you on more than one occasion to get a lawyer and I've advised you on more than one occasion, Mr. Cloutier, of the desirability of getting a lawyer.

THE DEFENDANT: Are you telling me that I have

to spend forty thousand to get a decent lawyer? Justice is supposed to be available free under the constitution and it shouldn't have to be bought.

THE COURT: If you couldn't afford a lawyers, Mr. Cloutier, then you should have filed an affidavit to the effect that you can't afford a lawyer and the Court would have appointed one. You refused to do that, as well.

THE DEFENDANT: At first I didn't even know if I could afford one or not. I contacted many lawyers.

THE COURT: All right, Mr. Cloutier.

THE DEFENDANT: Many wouldn't even reply.

THE COURT: We are going to proceed with it and in an orderly fashion, and I will not tolerate a disruption of the trial. If you persist in disrupting it, I will have you removed from the courtroom.

Now, sir, let's proceed.

(Whereupon, the following proceedings were

had in the presence of the Jury.)

THE COURT: May I see Exhibit 1 and did Mr. Cloutier see it?

THE DEFENDANT: At this time I would like to make another motion.

The counsel you appointed for me is ineffective and I don't want the Jury to think that I got help here when I don't have it, so I want him removed.

THE COURT: I will direct the Jury to disregard that

You application is denied.

THE DEFENDANT: I object to the denial.

THE COURT: Have you seen this proposed offer of exhibit 1, Mr. Cloutier?

THE DEFENDANT: I object to all the exhibits because I don't have proper counsel to help me determine what those exhibits are. I object to the whole trial. It's illegal and it was not brought down by a Grand Jury indictment. Even a

criminal gets a Grand Jury indictment. I claim a dismissal at this time because the trial is unfair and illegal.

THE COURT: I've ruled upon that application before, Mr. Cloutier. I've ruled upon it on more than one occasion and I've attempted to explain to you, sir, on more than one occasion that you're charged with a misdemeanor and not with a felony and that a Grand Jury indictment is not required by law. I tried to explain that to you, sir, on numerous occasions, and your application for a mistrial is denied.

THE DEFENDANT: The Constitution of the United States, Amendment 9 and 10, I believe, says the power is not given to the Government; that is denied to the Government. the powers to try somebody by affirmation was never granted to the Government by the Constitution of the United States and no laws or legislation can abrogate any right guaranteed to the People by the

Constitution of the United states. The Supreme Court ruled on that and I claim all these rights.

THE COURT: Mr. Cloutier, I would again request you, sir, to conduct yourself in an orderly fashion.

THE DEFENDANT: I am trying to but, you're trying to completely prevent me from putting up a defense.

I don't have counsel. I was in jail last night and I didn't have a piece of paper to write on

THE COURT: Counsel, please come to side bar

APPENDIX B

Raymond Cloutier

94-25 Hollis Court Blvd.

Queens Viliage, NY 11428

UNITED STATES DISTRICT COURT

EASTERN DIVISION OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA | ) CASE NO. CR-86- |
| | ) 00287 |
| -against- | ) I. Leo Glasser J. |
| RAYMOND CLOUTIER | ) OBJECTION TO |
| Defendant | ) TRANSCRIPT |
| | Part 1 |

ASSEVERATION

Certificate of service

Copy to US Attorney

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Raymond Cloutier

ASSEVERATION

OBJECTION TO TRANSCRIPT

1. The first 30 pages of the transcript were done over and materially changed. (Note the overtype on the pages beginning with page 31 to make them correspond with the others.) It does not show much of the discussion leading to the Voir Dire of the jury and left out all of the voir Dire questions. It does not show that I objected to the Jury as it was selected after it was selected. Also it does not show that Mr. Concannon who was told by the court not to speak for me did get up and spoke for me at that point and against my wishes and said that the jury was O.K. and acceptable. Mr. Concannon worked against me every time he could and failed to help me everywhere he could have. for example: he refused any help when I asked him which juror to challenge and which worked for the government ect. For that reason I was unable to properly use

my juror challenges. I was far from the Jury and I was very tired and I did not know how the jurors were numbered, who was No. 1 or 8 ect. None of this pertinent information is shown in the transcript.

2. On page 21 line 10 and 11 states that Mr. Concannon had been with me for about 3 hours. That just did not happen. He was with me for about half an hour in the presence of an Investigator namely Mr. John P. Keeney.

This time Mr. Concannon spent trying to convince me that I could not win and I should plead guilty. My wife and friends were not permitted to communicate with me or know my whereabouts. However they allowed me to go to the courtroom for about another half hour to talk with a Mr. Flyn who was an acquaintance. He had told them that he would help them convince me to plead guilty and therefore he was allowed to talk to me and Mr. Concannon for

about half an hour before Jury selection. My wife and other friends present were not permitted to communicate with me at that time, and were sent away under threat by 2 U.S. Marshalls. I was denied my next friend counsel again at that time.

3. On page 28 Line 5 reads; "You've expressed a desire to proceed on your own behalf." That is false I did not express such a desire. The proof of that is that I had asked for time to get counsel and was denied on several occasions, in fact all occasions that I asked for lay counsel. Mr. Melechinsky and Mr. Bell had come to court especially to help me defend myself and they were not even allowed to communicate with me by the Judge and 2 U.S. Marshalls.

I again asked for counsel when the trial was about to begin, and at that time a recess was taken and Mr. Concannon, a government biased counsel was appointed to so called "ASSIST ME". Also on page 29 line 4 to 10 I did not

wish to be my own attorney without counsel of choice. I did not understand that I should move forward alone without counsel of choice. Without effective counsel.

4. On page 28 line 14 to 18 also shows misinformation. I was given one week to get counsel on May 1st. That was extended to May 8th to June 11. That was granted because I had challenged jurisdiction and the prosecutor did not know how to respond, so he changed the subject by agreeing and suggesting that I be given until June 11 to get counsel. (see May 8th transcript.).

The Judge was very eager to move ahead fast and not give me adequate time, he even stated at one point that I would get a speedy trial. I could not find that in the transcript.

The court and prosecutor effectively sidestepped my jurisdictional challenge pursuant to McNutt V GMAC 298 US 178 p 144. The court was

not eager to give time. They allowed me some time to get counsel, but no time to prepare the case. And in fact rushed me through trial, without counsel and unprepared for trial on a pro se basis, At a time when I was completely exhausted from working all night and the trauma of having been arrested at work in spite of the fact that I had an Interlocutory Appeal before the second Circuit Court Of Appeals. I had 3 documents waiting for a decision before The Second Circuit Court Of Appeals. He still had me arrested and brought to trial unprepared.

5. On page 128 line 8 should read: "Is Constitutional, provided that it's voluntary." Page 46 line 3 and 4 should read: "Eisner V Macomber 252 US 189". And what is there namely McArthur V Brushaper.

6. On page 48 line 14 the words "reach a verdict" should read "before you convict me" and not what is there "before you reach a verdict".

7. On page 49 line 23, page 52 line 5, page 54 line 17 ect. These lines show that if I did not object to the evidence when I had objected to all the evidence presented on grounds that I did not have counsel to help me determine if the evidence was acceptable.

8. On page 121 line 24 & 25 are out of sequence and in error. It should read, "It is forbidden in and by the Bible" and that was uttered immediately after I was asked to take the oath. Which I would not do because of the admonitions against it in Matt 5:33 and James 5:12.

9. On page 123 line 8 "Constitutional, provided it's voluntary." and not as stated "Constitutionally provided,".

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Raymond Cloutier

APPENDIX B

Raymond Cloutier

94-25 Hollis Court blvd.

Queens Village N.Y. 11428

UNITED STATES DISTRICT COURT

EASTERN DIVISION OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA | ) CASE NO. CR-86- |
| | ) 00287 |
| -against- | ) I. Leo Glasser J. |
| RAYMOND CLOUTIER | ) OBJECTION TO |
| Defendant | ) TRANSCRIPT |
| | PART II |

ASSEVERATION

CERTIFICATE OF SERVICE

Copy to US Attorney

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Raymond Cloutier

10. On page 130 line 19 and 20 the cite should be: "Flora V United States 336 US 155".

11. On page 153 line 20 should read "I lose my labor", and not "I lose my wages,".

12 On page 186 line 9 and 10 The Court wrongly instructed the Jury that April 15 is the filing deadline. When in fact there is no deadline in law. (See attached exhibit).

13. On page 191 line 13 and page 193 line 12 the word "MUST" was used and not the would "SHOULD".

14. Pages 198, 199 and 200 were so completely changed they hardly resemble the second and last Jury charge asked for by the Jury. In the change the Court changed the Jury and HAMMERED in MUST CONVICT, no less than six (6) times. The Court practically single handedly convicted me by these instructions. Which shows that the Judge was not impartial, and should have recused when that claim was made. His

prejudice made him thereby a Judge in his own cause.

15. On the 2nd and last Jury change the Court gave the Jury, he told them that the CONSTITUTION is IRRELEVANT, and that does not show up in the transcript, at all.

APPENDIX C

UNITED STATES COURT OF APPEALL

for the

SECOND CIRCUIT

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At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 5th day of February one thousand nine hundred and eighty-seven.

Present:

HON. JAMES L. OAKES,

HON. THOMAS J. MESKILL,

HON. J. DANIEL MAHONEY,

Circuit Judges.

----------X

UNITED STATES OF AMERICA

Appellee, : Order

-against- : No 86-1397

RAYMOND CLOUTIER :

Defendant-Appellant. :

----------X

Appeal from judgment of conviction entered in the United States District Court for the Eastern District of New York, I. Leo Glasser, Judge, following a jury trial. The appeal came on to be heard on the transcript of record from the district court and was submitted for consideration. We affirm.

Appellant Cloutier was charged with and convicted of willful failure to file income tax returns for the years 1980, 1981 and 1982 in violation of 26 U.S.C. § 7203 in a three count information. appellant raises a number of objections to his conviction.

First, he claims that he was denied effective

assistance of counsel and was forced to proceed to trial without counsel. The record shows that Judge Glasser advised Mr. Cloutier to retain counsel several times and granted adjournments so that he could do so. At one hearing, Cloutier requested that a non-lawyer be allowed to appear as his counsel. Judge Glasser denied that request and again adjourned the case to allow Cloutier to retain an attorney as counsel. When Cloutier next appeared before Judge Glasser, this time involuntarily, the judge explained to Cloutier that either Cloutier could obtain counsel, counsel could be appointed, or Cloutier could proceed pro se. Ultimately Cloutier chose to represent himself with the assistance of counsel.

The record shows that Cloutier was required to go to trial and that he went to trial without counsel. It also shows that Cloutier was given more than ample opportunity to obtain counsel and

prepare. He was also advised of his right to an attorney, his right to represent himself, and the advantage of proceeding with an attorney. See United States v. Tompkins, 623 F.2d 824, 828 (2d Cir. 1980). Cloutier's position was and continues to be that he should have been allowed to go to trial with lay counsel. We reject that contention. See United States v. Benson, 592 F.2d 257, 258 (5th Cir. 1979) (per curiam); United States v. Kelley, 539 F.2d 1199, 1201-03 (9th Cir.), cert. denied, 429 U.S. 963 (1976).

Appellant's objections to the jury charge are likewise unavailing. Prior to the portion of the charge quoted in appellant's brief (p. 20) with respect to the obligation to file a tax return for each calendar year by April 15 of the following year, the district judge properly instructed the jury on whether the defendant was required to file a return. The charge on willfulness was in accord with the law as stated in United States v. Kraeger,

711 F.2d 6. 7 (2d Cor/ 1983) (per curiam). The court's instruction allowing the jury to consider Cloutier's tax protester status as relevant to his willfulness, if they found Cloutier to be a tax protestor, was also proper. See United States v. Brown, 591 F.2d 307, 311 (5th Cir.), cert. denied, 442 U.S. 913 (1979). Lastly, Judge Glasser's instruction to the jury with respect to Cloutier's fifth amendment privilege, "while an individual may be privileged from disclosing the source of his income on the tax return, the amount of income which an individual earns is not privileged . . .," was correct. See United States v. Schiff, 612 F.2d 73, 77 (2d Cir. 1979). Moreover, Cloutier's conclusory assertion of privilege, standing alone, was insufficient to sustain his claim of privilege. See In re Grand Jury Empanelled February 14, 1978, 603 F.2d 469, 477 (3rd Cir. 1979).

The district court had jurisdiction under 18 U.S.C. § 3231 (1982), and jurisdiction over Cloutier himself,

cf. United States v. Lira, 515 F.2d 68, 70 (2d Cir.), cert. denied, 423 U.S. 847 (1975); Marschner v. United States, 470 F. Supp. 201, 202-03 (D. Conn. 1979). Cloutier's lack of consent to his taxpayer status is irrelevant because the tax laws are not voluntary. See 26 U.S.C. § 6011.

We have considered the appellant's remaining contentions and find them to be without merit. Accordingly, the judgment is affirmed.

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JAMES L. OAKES,

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THOMAS J. MESKILL,

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J. DANIEL MAHONEY,
Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and it is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

APPENDIX D

Raymond Cloutier

94-25 Hollis Court blvd.

Queens Village NY 11428

UNITED STATES DISTRICT COURT

EASTERN DIVISION OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA | ) CASE NO. CR-86- |
| -against- | ) 00287 |
| | ) I. LEO GLASSER J. |
| RAYMOND CLOUTIER | ) CLAIM FOR |
| Defendant | ) DISMISSAL |

Defendant Raymond Cloutier claims dismissal on the 3 count conviction of the charge of willful failure to file for 1980, 1981, 1982, for the following reasons:

1. Defendant was denied due process of law. A fair trial in a fair tribunal is the basic requirement of due process. In re Murchison, 349 US 133.

2. Defendant was denied counsel of choice, at

the trial itself and at all the various hearings before the trial. In spite of the fact my counsels were with me in court.

3. The Judge was not impartial, and he refused to rescue himself. He is an employee of my accuser, and so was the prosecuting attorney Mr. O'Shea. The appointed counsel Mr. Concannon, and several jurors.

4. Defendant was prevented by 2 U.S. deputy marshals from communicating with those who were trying to help him with his case in court. And who had the material that he needed for defense. Defendant was unable to get most of the legal material he relied upon for defense.

5. The judge denied the defendant due process and counsel of choice, thereby denying himself jurisdiction. Defendant refused to plead at all hearings, because he was challenging jurisdiction. Even though jurisdiction was challenged and never proven, and must be

proven when challenged, according to McNutt v GMAC 298 US 178: and Hagens V Lavine 425 US 533. The court showed that it was not impartial and moved ahead without jurisdiction having been proven, over the repeated objections of the defendant.

6. The three charges under title 26 should be overturned, and dismissed, because title 26 is deceiving, vague, misleading, confusing, and fraudulent.

"A statue which either forbids or requires the doing of an act so vague, that man of common intelligence, must necessarily guess at it's meaning, and differ as to it's application, violates the first essential of "DUE PROCESS OF LAW". Connaly V General Construction Co. 255 US 81: International Harvester Co. V Kentucky 234 US 15: US V Reese 92 US 214.

No one can deny that title 26 is vague, confusing, and misleading. It's designed to fool

people into paying taxes not owed.

7. "Due process guarantee bars Congress from enactments, that "shock the sense of fair play". Calvin V Press 347 US 522.

Title 26 does the shock of fair play, it is vague and violates due process, and for that reason the 3 charges should be dismissed.

8. "A conviction obtained where the accused was denied counsel is treated as void for all purposes". Burgett V Texas 389 US 109. Defendant was denied counsel of choice at all stages of proceedings. And for this reason all charges and convictions should be overturned, and dismissed.

"Accused must be allowed a counsel of his own choice". Chandler V Fregag 348 US 3.

"Lack of counsel of choice can be conceivably worse than no counsel at all, or having to accept counsel beholding to one's adversary." Burgett V Texas 389 US 109.

"All the following decisions held that a state

may not pass statutes prohibiting unauthorized practice of law, or interfering with freedom of speech".

United Mine Workers V Illinois Bar Assoc; N.A.A.C.P. V Buttom 372 US 415 and The Brotherhood of Railroad Trainmen V Virginia State Bar Assoc. 377 US 1.

9. "Mere good faith assertion of power and authority (jurisdiction) has been abolished". Owens V City of Independence 455 US 622.

"No sanction can be imposed absent proof of jurisdiction".

Standard V Olsen 74 S ct. 768. And for these reasons

all charges and convictions, should be overturned, and

dismissed.

10. Since there can no valid law that violates the Constitution of the United States, there can be no willful failure to file without a contract. The defendant has never willfully and with full

disclosure, signed a contract with the IRS or the government, that waves his rights guaranteed under the Constitution of the United States, and thereby put him under title 26 and IRS jurisdiction. Any assumption that the defendant waved his rights, and volunteered into IRS jurisdiction is a fraudulent assumption. This fraud is proved by the material previously submitted as exhibits with the Eastern District court of New York in this case. Dismissal of charge and overturn of conviction is claimed.

11. There is no deadline in filing a 1040 form, and the IRS never proved that there was a deadline, and for that reason overturn of conviction and dismissal is claimed for all 3 counts.

12. Claim dismissal because the defendant was never properly indicted. Willful failure to file has been considered a crime and the defendant was charged with a crime. A crime is an indictable offense, the court can't have

jurisdiction without a bona fide indictment or consent of defendant. The court did not get either the indictment, or consent. For all stated reasons overturn of all convictions and dismissal is claimed.

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Raymond Cloutier

CERTIFICATE OF SERVICE

copy to U.S. attorney

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Raymond Cloutier

APPENDIX D

Raymond Cloutier

94-25 Hollis Court blvd.

Queens Village, N. Y. 11428

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA | ) CASE NO. CR-86- |
| | ) 00287 |
| vs. | ) NOTICE OF |
| | ) WITHDRAWAL OF |
| | ) DOCUMENTS |
| Defendant | ) JULY 18, 1986 |

The accused brought an appeal in this action before the 2nd Circuit court of Appeals on July 9, 1986, as Case No. 86-3034. (See attached receipt #012527).

Therefore action CR-86-00287 is not before this Court and the accused hereby withdraws the "Notification of Rights Sua Sponte", Claim and Demand for the Honorable Judge to Support

and Defend the Constitutions of the United States and this State as Valid and Binding Laws, and "Demand for Dismissal Due to Conflict of Laws" filed on July 11, 1986, reserving the right to amend and/or reinstate said documents at any appropriate time in the future.

Accused/Appellant (under duress),

RAYMOND CLOUTIER

RESCISSION OF CONTRACT & REVOCATION OF POWER

ASSEVERATON

I, Raymond Cloutier, a citizen of the United States, subject to God's Law of Nature, do hereby state the following to be true and correct to the best of my knowledge and belief:

1. That this document has been prepared, witnessed, and filed because the director of the social Security Administration holds the position that there are no statutory provision to resign from social security, and because there is no other remedy available to me at law by which I can declare and enforce my right to be free from the state enfranchisement and benefits therefrom.

2. That in approximately 1953, I obtained work and was told by the person who had hired me that I must have a social security number in order to retain the job. The ensuing employment was therefore under duress deceit.

3. That in 1952, when I received my social security number I was about 14 years old, a minor, and legally incapable of entering into a contract.

4. That from the time on, I was misinformed and deceived as to the nature and effect of the social security number, in that I was led to believe that it was a compulsory insurance program to provide for my old age. I was told that no one could get work without a social security number.

5. That for years monies have been withheld from my wages, resulting in an injury to my property. Property is labor and the wages derived therefrom, and I am entitled to all my wages as:

"..The labourer is worthy of his hire." Luke 10:7 and "hire" is defined as wages in Young's Concordance.

6. That after having studied the social security issue, I have found that having the social security

number gives this person the title of "taxpayer," which is an involuntary change in status from a freeman to a ward of the state, and in addition, I am robbed of my constitutional protections. For example, I have now found that with my application for the social security number and the resulting issuance thereof, that I unknowingly waived my right to an Article I and Article III judge to restrain or review assessments and collections, as 26 USC 6305 (b) plainly states:

> "No court of the United States, whether established under article I or Article III of the constitution shall have jurisdiction of any action, ..."

Such a statutory provision causes a loss or diminution (depending upon other statutory provision) of 4th, 5th, 6th. 7th, and 9th Amendment rights.

7. That possession of a social security number constitutes an abrogation of my religious freedoms. Due to my religious training and beliefs, I hold that possession of the social security

number causes me to sin, and I must revoke said number or be liable to the wrath of God. Revelation 13:17 states that, "11...no man might buy or sell, save that he had the mark, or the name of the beast, or the number of his name." The penalty for receiving this mark is stated in Revelation 14:9-10:

> "...If any man worship the beast and his image, and receive his mark in his forehead, or in his hand, the same shall drink of the wine of the wrath of God, which is poured out without mixture into the cup of his indignation; and he shall be tormented with fire and brimstone into the presence of the holy angels, and in the presence of the Lamb."

8. That as result of my studies, my ignorance has come to an end, and I have regained my capacity to be an American Freeman.

It is now necessary that I declare said application for a social security number and the resulting contract number (003-26-2433) with government, and any power assumed or implied by this number, to be null and void from its inception due to the fraud, deceit, duress, and

incapacity perpetuated upon me by the other party of the contract; and that I am no longer property of the state, the federal government, nor the United States Treasury, to be used as collateral for the Federal Reserve.

9. That with this rescission of contract and revocation of power I do, hereby claim all of my constitutional rights at law, my natural and inalienable rights. And do hereby declare to one and all that I am a natural person who is not a creation of, nor subject to the state's civil law of admiralty, maritime, or equity jurisdictions.

_____
RAYMOND CLOUTIER

Witnessed by:

1. _____

2. _____ as:

"...at the mouth of two witnesses, or at, the mouth of three witnesses, shall the matter be established." Deut. 19:15

cc: IRS Holtsville NY

Director of IRS in DC

Social Security Adm. Maryland

Secretary of Treasury

Employer

APPENDIX D

Raymond Cloutier

94-25 Hollis Court Blvd.

Queens Village, N.Y. 11428

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

| | |
|---|---|
| UNITED STATES OF AMERICA | ) CASE NO. CR-86- |
| Plaintiff, | ) 00287 |
| vs. | ) CLAIM TO |
| RAYMOND CLOUTIER | ) RECUSE |
| Defendant | ) JUNE 25, 1986 |

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Now comes the falsely accused RAYMOND CLOUTIER claiming that under 28 USC 144, Judge I. Leo Glasser must rescue himself and shows:

1.

That said Glasser is an employee of the Plaintiff who receives over $73,000 per year from it. He cannot possibly be a fair and impartial judge under these circumstances.

2.

As an indirect employee of the accused and receiving pay from him, said Glasser is in a conflict of interest position.

3.

Said Judge Glasser presumably receives memorandums and orders from Plaintiff. among these are orders (oral and/or written) which tell him how to handle tax cases and how to get convictions. He should recuse himself and allow a fair and impartial State Court judge and jury, selected by lottery, to be set up jointly by the parties, to try this case.

4.

In addition, it is believed that said Judge Leo Glasser has handled tax cases before in which he denied the Defendant his right to introduce evidence showing that there is no such crime as "failure to make and file" an "income tax return".

WHEREFORE the accused claims that said

judge must recuse himself and this action be brought before another judge after the required indictment by a probable cause (Grand) jury.

Accused (under duress)

_____
Raymond Cloutier

STATE OF NEW YORK )
) ss. June 2, 1986
COUNTY OF )

Personally appeared before me the above mentioned Raymond Cloutier and certified that the above statements are true and correct to the best of his knowledge and belief.

_____
Notary

Copy to all concerned.

APPENDIX D

Raymond Cloutier

94-25 Hollis Court Blvd.

Queens Village, N.Y. 11428

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

| | | |
|---|---|---|
| UNITED STATES OF AMERICA | ) | Case No. CR-86- |
| | ) | 00287 |
| -against- | ) | I. L. Glasser, J. |
| Raymond Cloutier | ) | |
| Defendant | ) | June 11, 1986 |

SUPPLEMENTAL JURISDICTIONAL CHALLENGE
COUNTER-COMPLAINT AND CLAIM FOR DAMAGES

BE IT KNOWN BY ALL CONCERNED that this Court does not, has not and lawfully cannot have jurisdiction over Raymond Cloutier because, among other reasons:

1. There is no victim (Corpus Delicti).

2. The accused has not been charged with doing harm to person or property.

3. The Complainant and its paid "judge" are in violation of, and are in a conflict of interest position with, (supreme Law) the U.S. Constitution.

a. In this regard, QUESTIONS OF LAW to be answered by the U.S. Attorney and/or the presiding judge are:

(1) Is Amendment Article X of the U.S. constitution clear in its mandate that "The powers not delegated to the United States by the Constitution ... are reserved ... to the people?"

(a) If so, by what authority did Cassandra Levant order the accused into this court without a probable cause hearing, without the concurrence of a full grand jury (ie., a presentment or indictment), without an opportunity to fact the witnesses against him in their examination, on the basis of a Constitutionally impermissible "information", and on the basis of a non written, rubber stamp signature?

(2) Can the U.S. Constitution and its mandates, especially those in Amendment IV, V and VI, be ignored or violated by any judge or other official?

4. No private person has sworn under oath that a crime has been committed.

5. There has not been a probable cause finding by a probable cause jury.

Said Raymond Cloutier has chosen not to submit to equity jurisdiction and continues to claim all of his rights under law.

Said Raymond Cloutier hereby enters a counter-complaint and claims general and punitive damages in compensation for the following unlawful acts, and others, perpetrated against him in this matter.

1. On April 17, 1986, Asst. U.S. Atty. Renna Raggi, without right, without probable cause and in violation of numerous laws, filed a three count "information" against the accused, in the U.S.

district court for the Eastern District of N.Y.

2. On April 21, 1986, Grand Jury Clerk Cassandra Levant, without right and in violation of numerous laws (see above), abducted the accused by creating the appearance that he was required to appear in said U.S. District Court on May 1, 1986.

3. On May 1, 1986, Asst. U.S. Attorney John Gleeson, without right and in violation of numerous laws, introduced an action against the accused in said U.S.. Court.

4. Defacto U.S. District Judge I. Leo Glasser, without right, and by unlawfully assuming the status of attorney for the accused, unlawfully entered a "plea" for him.

5. Said Judge Glasser then abducted the accused by directing that he return on May 8, 1986, under threat of violence.

6. On May 8, 1986, Asst. U.S. atty. Sean O'Shea, without right and in violation of numerous laws,

brought on a further action against the accused.

7. Said Judge Glasser violated the right of the accused to have a friend help him in court, thereby violating the friend's rights as well.

8. Said Glasser also violated the anti trust law, Title 15 of the United States Code.

9. Said Glasser failed in his duty to dismiss the case on demand, for lack of jurisdiction. (Nonfeasance).

10. Said Atty. O'Shea broke the law by claiming that the court did indeed have jurisdiction but failed to present any evidence to support that claim.

11. Said Glasser committed the crime of malfeasance by calling the DEMAND of the accused a REQUEST, knowing full well that he had no authority to ignore a lawful demand.

12. Said Glasser then, without right and in violation of numerous laws, denied the demand.

13. Said Glasser committed the crime of

misfeasance by telling the accused that misdemeanor charges do not require an indictment by a Grand Jury.

Said Glasser committed the crime of misfeasance by refusing to acknowledge that the Sixteenth Amendment had never been validly ratified.

Said Glasser committed the crime of malfeasance by insisting that an accused can be brought to trial simply on a charge by a United States Attorney, without an indictment or presentment.

Said Glasser committed a further crime of abduction by 'expecting' the accused to return on June 11, 1986.

None of the inalienable and/or unenumerated rights of the accused are to be construed as waived by omission or commission, including his right not to be 'put to plea', his right not to have a 'plea' entered for him and his right

to a probable cause jury hearing before being brought to trial.

All rights reserved forever.

Accused (under duress)

_____

Raymond Cloutier

STATE OF NEW YORK )
) ss. June 10, 1986
COUNTY OF )

Personally appeared before me the above mentioned Raymond Cloutier and certified that the above statements are true and correct to the best of his knowledge and belief.

_____

Notary

Copy to all concerned.

APPENDIX D

Conditions of Probation

UNITED STATES DISTRICT COURT

FOR THE

EASTERN DISTRICT OF NEW YORK

To Raymond Cloutier Docket No.

94-25 Hollis Court Blvd. 86-CR-287-1

Address Queens Village, N.Y. 11428

In accordance with authority conferred by the United States Probation Law, you have been placed on probation this date, September 10, 1986, for a period of three years by the Hon. Israel L. Glasser United States District Judge, sitting in and for this District Court at Brooklyn, New York.

CONDITIONS OF PROBATION

It is the order of the court that you shall comply with the following conditions of probation:

(1) You shall refrain from violation of any law (federal, state, and local). You shall get in touch immediately with your probation officer if arrested

or questioned by a law-enforcement officer.

(2) You shall associate only with law-abiding persons and maintain reasonable hours.

(3) You shall work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. When out of work you shall notify your probation officer at once. You shall consult him prior to job changes.

(4) You shall not leave the judicial district without permission of the probation officer.

(5) You shall notify your probation officer immediately of any change in your place of residence.

(6) You shall follow the probation officer's instructions.

(7) You shall report to the probation officer as directed.

The special conditions ordered by the Court are as follows: Counts 1, 2, 3. -

Count 1 - Custody of Attorney General - 1 year -

3651 - serve 6 months Balance of Sentence suspended. Probation 3 years.

Counts 2 & 3 - Imposition of Sentence Suspended - Probation 3 years Commence upon expiration 6 months prison term. - Assessment $75 total

SPECIAL CONDITIONS:

1) File timely and accurate tax returns and pay all tax liabilities that are outstanding. Surrender to U.S. Marshals on 10/1/86.

I understand that the Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

I have read or had read to me the above conditions of probation. I fully understand them and I will abide by them.

AS DIRECTED BY U.S. Signed _____

Date_____

PROBATION OFFICER_____

Date _____